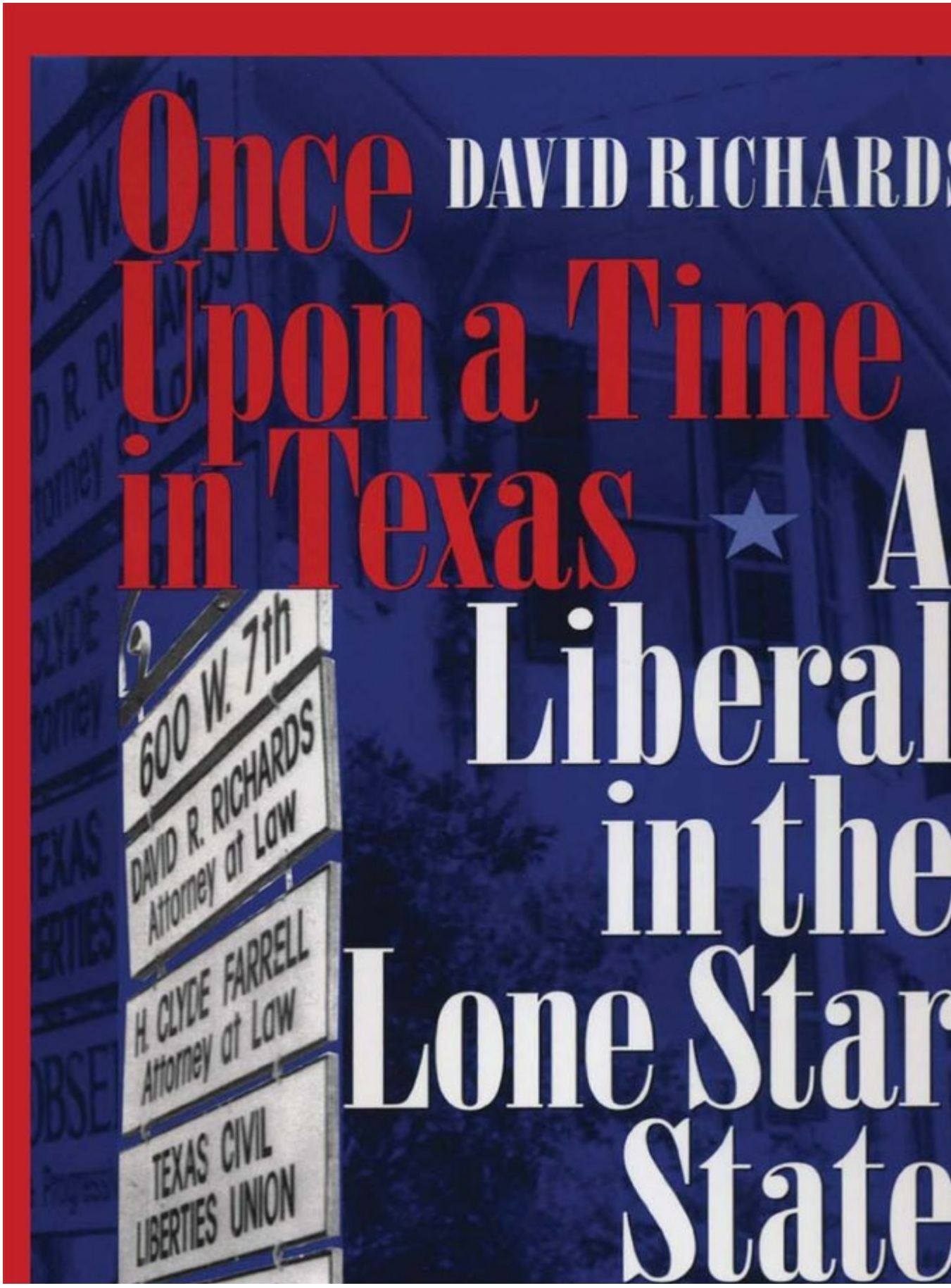

Once Upon a Time in Texas
DAVID RICHARDS
A Liberal in the Lone Star State
600 W. 7th
DAVID R. RICHARDS
Attorney at Law
H. CLYDE FARRELL
Attorney at Law
TEXAS CIVIL
LIBERTIES UNION

OBSERVER

EARLY BIRD BOOKS

UNIVERSITY OF TEXAS PRESS

Love this book?

Choose another ebook on us from a selection of similar titles!

- or -

Not loving this book?

No worries - choose another ebook on us from a selection of alternate titles!

CLAIM YOUR FREE EBOOK

Once Upon a Time in Texas

FOCUS ON AMERICAN HISTORY SERIES
Center for American History, University of Texas at Austin
EDITED BY DON CARLETON

Once Upon a Time in Texas
A Liberal in the Lone Star State

BY DAVID RICHARDS

UNIVERSITY OF TEXAS PRESS
AUSTIN

Frontispiece: Sam Houston Clinton and I bought an old house in 1970 on the corner of Seventh and Nueces in Austin. It served as our office and as the headquarters of the *Texas Observer* and the Texas Civil Liberties Union. It is pictured here after Sam got elected to the Court of Criminal Appeals.

Facing page: These are my children, from left to right: Cecile Richards, Sam Richards, Hallie Richards, Ellen Richards, Dan Richards, and Clark Richards. No book could be complete without them.

Copyright © 2002 by the University of Texas Press
All rights reserved
Printed in the United States of America
First edition, 2002
Requests for permission to reproduce material from this work should be sent to Permissions, University of Texas Press, P.O. Box 7819, Austin, TX 78713-7819.

Library of Congress Cataloging-in-Publication Data
Richards, David, 1933–
Once upon a time in Texas: a liberal in the Lone Star State / by David Richards.
p. cm.— (Focus on American history series)
Includes index.
ISBN 0-292-77118-5 (cloth: alk. paper)
ISBN 978-0-292-74906-1 (e-book)
ISBN 9780292749061 (individual e-book)
1. Richards, David, 1933– 2. Political activists—Texas—Biography. 3. Texas—Politics and government—1951– 4. Liberalism—Texas—History—20th century. 5. Civil rights movements—Texas—History—20th century. 6. Labor movement—Texas—History—20th century. I. Title. II. Series
F391.4R54 063 2002
942.085 092—dc21
[B]

2001052231

This book is dedicated with abiding love to my children

Cecile,
Dan,
Clark,
Ellen,
Sam,
and
Hallie

Frankie Randolph, at the podium, was a dominating force in liberal politics in Texas throughout the 1950s. She funded the *Texas Observer* and provided much of the organizational muscle for a series of statewide liberal political action groups. In 1956, over the opposition of LBJ, she was elected National Democratic Committeewoman from Texas. Photograph courtesy of the Center For American History, UT-Austin, Lee (Russell) Photograph Collection, 1935–1937, CN# 10749.

Contents

Acknowledgments

1. Texas, Our Texas

2. Coming of Age in Waco and Austin—1950s Style

3. Off to Dallas to Practice Law

4. The 1960 Election: The New Frontier Beckons

5. Returning to Dallas Hat in Hand

6. Representing Labor Unions in Dallas, Texas

7. Dallas, 1966: The Federal Courts and the Winds of Change

8. The Radical Left Shows Up in Texas

9. A Gleeful Return to Austin

10. Changing the Face of the Texas House of Representatives

11. Life and Times with U.S. District Judge Jack Roberts

12. The Texas Department of Public Safety Gets Caught Snooping on "Radicals" at the Unitarian Church of Dallas

13. Frank Erwin and UT Take On the *Rag*

14. Law and the Counterculture

15. Austin Politics—Come the Revolution

16. Student Voting Comes of Age

17. Redistricting East Texas in the 1970s

18. Mad Dog Memories

19. Of Time on the River

20. A Decade or So of Voting Rights Wars in Texas

21. "The Times They Are A-Changin'"

22. The 1982 Elections: Triumph of the Yarborough Democrats

23. The 1990s and the Last Guffaw

24. The Trail Doubles Back

Index

The Mullinax & Wells law firm several years before I joined it. From left to right: Ted Robertson, later of the Texas Supreme Court; Sam Houston Clinton Jr., later of the Texas Court of Criminal Appeals; Otto Mullinax; Oscar Mauzy, later of the Texas Supreme Court; Nat Wells; and Charlie Morris.

Acknowledgments

I WOULD NEVER have undertaken or completed this project without the constant support of my lovely wife, Sandy, who reviewed and made helpful suggestions and comments on a series of drafts and was a ready source of encouragement when I bogged down. I am much indebted for her aid and comfort throughout the process.

A number of old friends were helpful, cudgeling my enfeebled memory and correcting my sometimes erratic notions of past events. My particular thanks go out to Jan Reid, Kaye Northcott, Oscar Mauzy, and Molly Ivins, who read early drafts and supplied both encouragement and helpful suggestions. Thanks also to Julie Ford, who graciously volunteered to help me avoid problems of defamation. Finally, I would never have made it without my sons Clark and Sam, who repeatedly rescued me from computer snafus.

After three defeats, two quite narrow, in races for governor, Ralph Yarborough won a special election in 1957 to the U.S. Senate, to the great joy of his fervent supporters. Yarborough had a distinguished Senate record and was the only senator from the Old South who consistently supported civil rights legislation. He defeated George Bush in his Senate reelection campaign of 1964. Photograph courtesy of the Center For American History, UT-Austin, Lee (Russell) Photograph Collection, 1935–1937, CN# 10747.

Henry Gonzalez, then state senator from San Antonio, led the fight against the segregation bills in the 1957 legislative session. He ran unsuccessfully for governor in 1958 against Price Daniel. Here he is shown being welcomed at the Democrats of Texas Convention, liberal counterpart to the official state party organization. Photograph courtesy of the Center For American History, UT-Austin, Lee (Russell) Photograph Collection, 1935–1937, CN# 10748.

Arthur Weaver and his wife pictured in front of their grocery store on Butt Street in Nacogdoches, Texas. Mr. Weaver was an indomitable civil rights activist in Nacogdoches and the lead plaintiff in two successful voting rights cases against both the city and the county of Nacogdoches. The 1974 county suit resulted in the first Black county official elected in Texas in the twentieth century.

The largest antiwar march in Austin occurred in May 1970, shortly after the Kent State shootings. It turned into a peaceful demonstration after a week or more of tense confrontations between activists and Austin police. It was peaceful thanks to U.S. District Judge Jack Roberts, who ordered the city of Austin to allow the march to go forward. Photograph courtesy of the Center For American History, UT-Austin, Prints and Photographs Collection, CN# 10745.

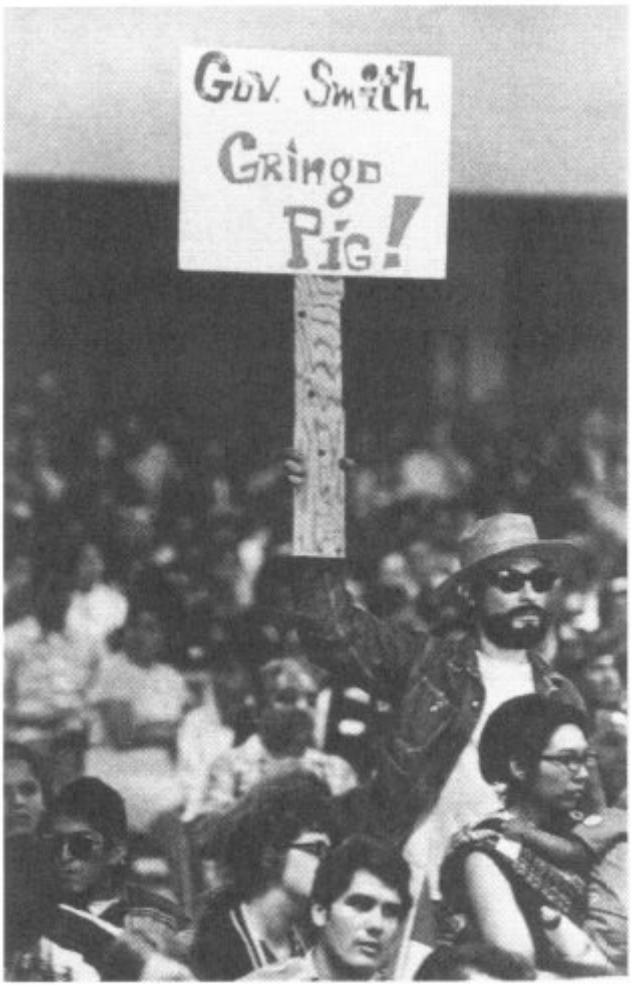
The farmworkers march began in the Texas Valley, in Mission, Texas, in the summer of 1966 as an outgrowth of labor organizing and the La Casita melon strike. The march culminated in Austin on Labor Day with a huge rally on the capitol grounds. This was a major event in the awakening of politics among Mexican Americans in South Texas. Pictured in the front row are Eugene Nelson, farmworker organizer; Reverend James Navarro; and Father Antonio González. Roy Evans and Hank Brown of the Texas AFL-CIO can be seen in the right background.

The Mad Dog Board of Directors meeting. I believe this was the only time it ever gathered—probably fortunately. Seated at the table from left to right are Mike Hershey, someone impersonating Gary Cartwright, Bud Shrake, and the author. Other attendees remain nameless. Photograph courtesy of the Center For American History, UT-Austin, Hershorn (Shel) Photograph Collection, ca. 1953–1996, CN# 10793.

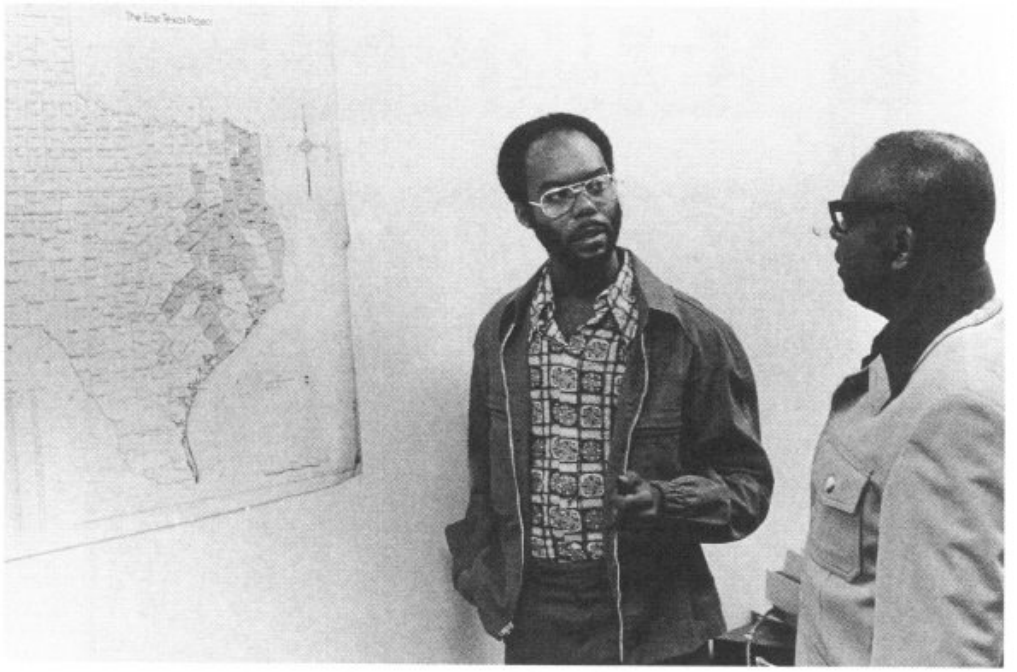
In the days preceding the May 1970 peace march, Austin police encouraged UT students and other peace activists to confine themselves to the campus area. Photograph courtesy of the Center For American History, UT-Austin, Prints and Photographs Collection, CN# 10177.

The site of many a pleasant gathering over a twenty-year period: my old farm on the North San Gabriel, near Liberty Hill. Campers visible from left to right are my wife, Sandy, John Duncan, Larry Sauer, Kaye Northcott, Becky Beaver, and Molly Ivins, with various offspring in the background.

Franklin García was a longtime organizer for the Amalgamated Meat-cutters Union. He was a prime mover in labor activities throughout the Hispanic world of South Texas and was instrumental in the farm-workers' movement and in the political change in South Texas.



Governor Preston Smith ordered VISTA workers out of Del Rio and Val Verde County in 1968 because of complaints that the volunteers were engaged in politics that threatened the old order. A sizable protest march and rally ensued. Among those in attendance were now State Senator Gonzalo Barrientos and now State Representative Elliot Naishtat, both of Austin. Photograph courtesy of the Center For American History, UT-Austin, Hershorn (Shel) Photograph Collection, ca. 1953–1996, CN# 10750.



Frank Robinson (right) was a civil rights activist in Palestine, Texas, and the lead plaintiff in voting rights litigation concerning Anderson County and the city of Palestine. His untimely death has been a source of controversy, as his family and supporters have always believed he was murdered as a result of his civil rights activities. Pictured also is former State Representative Paul Ragsdale from Dallas. Paul is standing before a map detailing his East Texas voting rights project, a largely successful effort we made to increase the number of Black officeholders in East Texas. Photograph courtesy of the Center For American History, UT-Austin, Robinson (Frank J.) Papers, CN# 10746.

In the early 1970s, the UT Shuttle Bus Drivers Union was formed and struck for recognition and a contract. Two protracted strikes occurred in those years, and the union became a source of political activism in Austin. At this writing, two former union leaders hold public office in Travis County, County Attorney Ken Oden and Probate Judge Guy Herman. Photograph © copyright Alan Pogue.

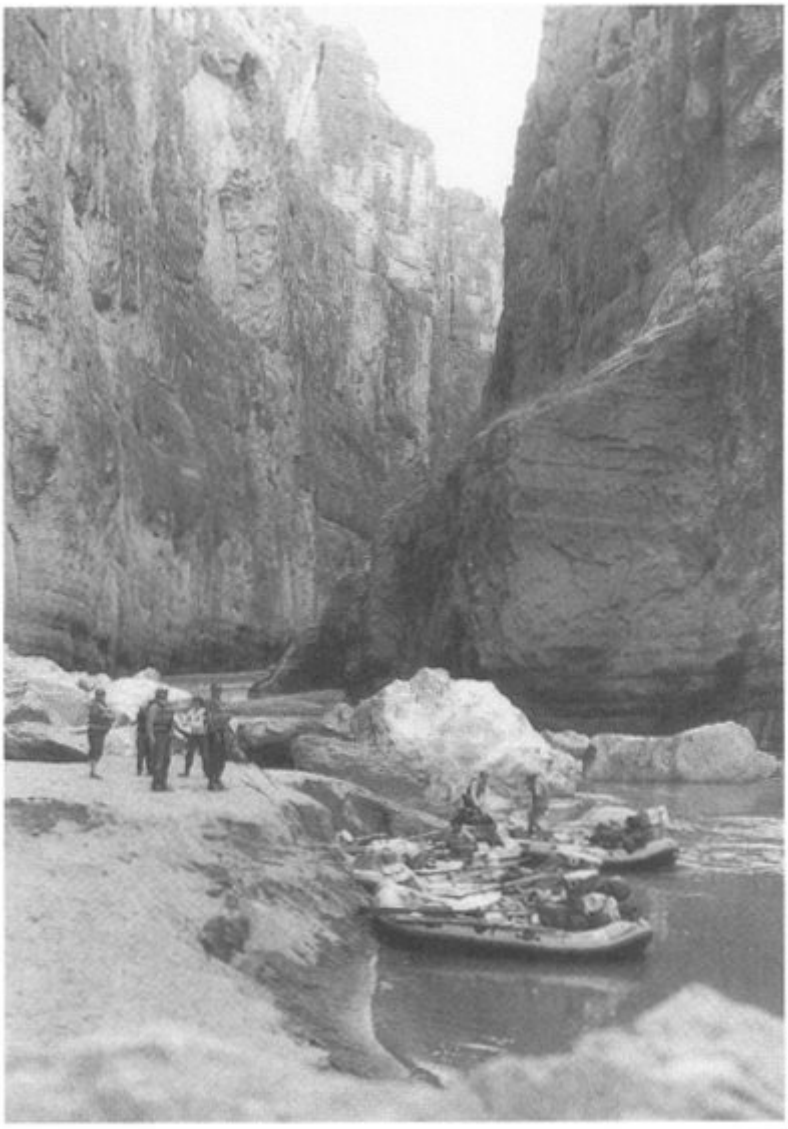
Martin Wiginton and Bobby Nelson were two of Austin's most notable political activists during the 1960s and 1970s. They conceived of and managed two of Austin's most important music venues: the Alamo Lounge, pictured here, and Emma Joe's, named for Emma Goldman and Joe Hill. Emma Goldman is credited with the line that goes something like this: If there is not going to be dancing in your revolution, count me out.

Lyndon Johnson and Frank Erwin, probably working on their enemy list.

Yarborough Democrats celebrated great victories in 1982 with the election of Ann Richards to state treasurer, Jim Hightower to agriculture commissioner, Garry Mauro to land commissioner, and Jim Mattox to attorney general. Pictured here, from left to right, are Garry Mauro, Jim Hightower, and Ann, on the happy occasion of their swearing in. Photograph courtesy of the Center For American History, UT-Austin, Richards (Ann W.) Papers, 1933–1999, CN# 10702.

As described in Chapter 22, I went to work for Jim Mattox when he took office in 1983. Some months into his administration, Mattox was indicted by District Attorney Ronnie Earle out of a political brouhaha. In order to give courage to the staff of the AG's office during those unsettled times, a meeting was held of the hundreds of employees of the office. As we bigwigs sat on the stage, a pizza delivery boy arrived, sent by some wag—my future partner Phil Durst—and delivered me a pizza. This picture resulted. On the front row are Mattox, Tom Green, yours truly, and Harmon Lisnow. Behind us are the various division chiefs of the office.

Once Upon a Time in Texas



A shot taken by my wife, Sandy, at the entrance to St. Helena Canyon in the Big Bend, one of the lovely spots in Texas. In the foreground, you can barely make out that intrepid adventurer Mike Sharlot of the UT Law School.

1
Texas, Our Texas

GUY CLARK HAS A LINE, one of many, that speaks volumes about how I feel about Texas: "Here comes Texas rolling through my mind / ain't nothing to it momma, don't be crying, / just one of those things that everyone goes through." As I have struggled with this memoir about Texas as I knew it over the last forty-odd years, Guy Clark's lyrics have been a constant refrain. For newcomers to the state who express curiosity about the nature of the beast, I suggest they buy a Guy Clark album and listen up. "Texas Cooking" would be a good starting point.

Texas is thought by some to be a rogue state, populated by overblown and oversized juvenile delinquents. Like any myth, this view has some core support. An old friend, a union lawyer like myself, had his own peculiar slant on Texans. He lived most of his life in states adjoining Texas, notably Arkansas, Louisiana, and New Mexico. He concluded that the people of those states basically despise Texas and Texans, but in his view the most infuriating thing about this phenomenon is that Texans seem to know of this dislike and simply "don't give a shit." Although Texans of my generation may not give a shit about what the world thinks about them, the state is too large and too powerful to be written off. Texas's population now exceeds that of New York; three of its cities—Dallas, Houston, and San Antonio—are among the top ten largest in population in the country; and the state's economy is larger than that of many nations. Texas politicians, ranging from Sam Rayburn and Lyndon Johnson to the somewhat paler variety of recent years, cut a wide swath during the last half of the twentieth century. Furthermore, at this point we may have in store the foundation of a new political dynasty by those Connecticut Yankees, the Bush family. Since they seem to have adopted the state, I assume the state should reciprocate and declare them all Texans. Nevertheless, their claims to be true Texans would be immeasurably enhanced if they would spend July and August in the state instead of in the cool climes of the Maine coast. All of this is simply to say that it is worthwhile to try to understand the state, or state of mind, of Texas.

Two particular Texas news stories have stuck in my head over the years. The first appeared when I was in Washington with the Civil Rights Commission in 1961. Lyndon Johnson had taken some eastern reporters on a Texas tour of his ranch and the surrounding Hill Country. There was a breathless account in, I believe, the *Washington Post* of a car trip with Vice President Johnson driving, drinking beer, and speeding through the countryside to the terror of the reporter. When I read the story, I thought, "So what?" From my experience, most of the weekend drivers in the Texas Hill Country were doing the same thing: drinking beer, enjoying the countryside, and having a good time, shocking as it might be to the rest of the country. "A six-pack to go" was almost a ritual as one got ready to hit the Texas highway.

The second story, of more recent origin, concerned the Branch Davidian standoff in my hometown of Waco. An enterprising *New York Times* story sought to explore the extent of gun ownership among Wacoans by interviewing

a high school friend of mine who owned a gun store. Leo Bradshaw described the level of armament along these lines: every household in Waco probably had at least a shotgun, a deer rifle, a .22 rifle, and some type of pistol, primarily because Wacoans enjoyed guns and hunting. Leo explained that his typical customers were interested in a few more firearms; most of them would have several shotguns, two or three rifles, and an assortment of handguns. They'd grown up that way and never saw any reason to change. Leo's version seemed to me to be exactly right; I had grown up in such a household, as had most of my friends, and found nothing shocking in the account. It struck me at the time, however, that the typical reader of the *Times* might find the account a little alarming. In discussing this project with a young relative who lives in New York, I mentioned Leo's story and opined that I felt the rest of the country was interested in Texas. He responded that he felt it more accurate to say they were fearful of the state and its residents.

Sometime in the 1970s, Congress was considering legislation to declare a portion of the Rio Grande a wild and scenic river. The river forms a 750-mile border between Texas and Mexico and traverses some of the nation's most desolate terrain. Joe Lelyveld of the *New York Times* came out to do a story, and a group of us Texas liberals took him on a five-day canoe trip down a remote section of the river known as the lower canyons.

The trip had the usual pleasures—fast water, good company, and long stretches of Chihuahua Desert scenery. Unfortunately for Lelyveld, he was in a canoe with Texas Land Commissioner Bob Armstrong, better known for his charm and intelligence than his river skills. They suffered a major crash and some moments of fright before we dragged them from the river. Lelyveld recovered after a bit, though the canoe only partially did, as it had to complete the trip festooned with duct tape, the canoeist's solution to many river emergencies. Overall, it was a splendid trip, punctuated by an overstimulated evening in a natural hot spring in Mexico where everyone stripped off their clothes and went native. Lelyveld's *Times* article concluded that it made little difference what Congress decreed, both the people and the river were wild and scenic.

So it may still be in Texas, but the dissent on the left seems terribly truncated. Before my energy is lost, I want to write about the players and the movements, as I saw them, that sought to make the state more tolerant and more tolerable. Throughout the last half-century in Texas a semipermanent rump convention has hounded the Texas establishment, an effort that met with occasional success but was mainly ordained for frustration. Out of these efforts, however, grew a colorful cast of personalities spread across the civil rights movement, organized labor, the rise of Hispanic political activism, and the plain old kamikaze liberals of the state. Some of these activists had their moments; most did not, but their existence was and is important to an understanding of the current state of the State.

It was my good fortune to carouse with, march with, and play politics with a great band of free spirits who sought to make a change in the state. There was an old adage around the Texas legislature that described the zeitgeist of the times and was contained in this advice given by the dean of the Texas legislature to freshmen legislators: "Remember, vote with the conservatives and party with the liberals." So whether or not we won many victories, we were pretty clearly where the action was to be found.

The names of many people crop up in the pages that follow. Most will be unfamiliar to the reader, but their names appear because it seemed to me they were part of the account and, probably, because I love them. They played their roles, large or small, in the movement for change in Texas. They are referred to here with the best shorthand identification I could provide. So open up your heart to these political junkies, writers, teachers, lawyers, union activists, scofflaws, and bons vivants.

2
Coming of Age in Waco and Austin—1950s Style

FOR MANY OF US Texas liberals who came of political age after World War II, two institutions dominated our maturation: racial segregation and U.S. Senator Ralph W. Yarborough. Rigid segregation was a dominating force in Texas until well into the 1960s; indeed, the ruling political hierarchy was virtually founded on the claim that all politically progressive movements had race mixing as their core goal. As the historian C. Vann Woodward has argued in his writings, racial campaigning was a key element in destroying the populist movement in the South. By the mid-twentieth century, racism remained a central political technique used by the ruling conservative power brokers to retain control. Any time a progressive candidate seemed to threaten the establishment, the quickest way to discredit the person was to label him or her as a "nigger lover." These hostile attitudes were not directed solely toward Black Americans; in most parts of the state they extended equally to Mexican Americans. The founding of the earliest Mexican American political organization, the G.I. Forum, was a direct outgrowth of the refusal to permit the burial of a Hispanic soldier in the "white" cemetery of a small South Texas town.

This exclusion of the minority population dominated the political process in Texas. Despite relatively large concentrations of Blacks throughout East Texas and in the urban areas, there had essentially been no Black officeholders in the state since Reconstruction ended. Similarly, even in South Texas, where Mexican Americans frequently constituted a majority of the population of a county, political power was firmly in the control of the Anglo minority. Indeed, boss rule of predominantly Hispanic counties in South Texas has been credited for Lyndon Johnson's 1948 election to the U.S. Senate. Against this backdrop, Ralph Yarborough arose in 1954 as the champion of a large body of disparate and disgruntled Texans.

Yarborough was cut from the classic southern populist model, railing against corporate greed and the cozy relationships between officeholders and the business lobby. A trademark of his stem-winding speeches was the promise to put the jam on the lower shelves so that the common people could get their share. Raised in East Texas, he managed to overcome his segregationist roots and become a champion of civil rights. During his later tenure in the U.S. Senate in the 1960s, he was typically the only member from the Old South voting for civil rights legislation. When he first appeared on the statewide political scene during the 1950s, he became the galvanizing figure for a progressive movement that took on new life beginning in the midfifties and continued on its rocky course in the following decades.

Texas in the 1950s was a classic southern one-party state. There were no Republican officeholders and, indeed, there were no general election contests of any consequence. The Democratic primary determined election outcomes. In fact, many of the political battles of those years were concentrated on control of the party machinery, battles that seem highly trivial today. Nonetheless, the

battle was for the soul of the Democratic Party. By 1952, Yarborough had emerged as the leader of the Texas loyalists, those Democrats who supported the national Democratic Party and its nominees. Allan Shivers, governor of the state and titular head of the state Democratic Party, had led Texans for Eisenhower in the 1952 general election and was a classic southern racist politician of the era.

Yarborough had made a fairly puny governor's race against Shivers in 1952, but as the 1954 primaries approached, it became clear that the rematch between the two was going to be a barn burner. It was in the midst of that campaign that I came of political age and bolted from the security of childhood friends and the assumptions of the Waco social order. I had just turned twenty-one when I announced to a group of friends at the country club the heretical notion that I was going to vote for Yarborough. I do not remember whether they had any reaction, and if they did, whether it was consternation or bemusement, nor do I understand why it seemed important to me to make the break, but break I did. I had been raised by relatively progressive parents, both transplanted Iowans, who after twenty years in Waco were probably still considered by many to be "damn Yankees." My childhood as part of what passed for Waco society had certainly been privileged. I had been exposed to the dubious benefits of an eastern prep school and University of Texas fraternity life, both of which had soured me on the values of the monied social order. More importantly, I suspect, I had been nourished on Robin Hood as a child and had discovered Dos Passos's trilogy *U.S.A.* in my youth, which I may have read more for sexual titillation than for political content. In all events, somewhere along the line my disgust quota had overflowed, probably caused by a combination of racism, McCarthyism, and the smugness of the poohbahs who ran things, and I slipped my moorings.

The 1954 Shivers campaign was particularly odious. At one point, he promised to urge the legislature to make it a death-penalty crime to be a member of the Communist Party. But the major thrust of the campaign was the theme that Yarborough was the candidate of radical minorities, the NAACP, the CIO (Congress of Industrial Organizations), and the ADA. In those years, it was not necessary to explain that the ADA was the Americans for Democratic Action, a favorite whipping boy of the right wing. The ACLU (American Civil Liberties Union) was not mentioned because it did not exist in the state at the time, and no Hispanic organizations were included because Mexican Americans had not yet emerged as troublemakers for the establishment. The state's leading newspapers endorsed Shivers because, as many of them said, Yarborough was the candidate of the minorities. One effect of these attacks, which persisted throughout the 1950s, was to cement the political coalition then forming between labor, minorities, and loyalist Democrats. This alliance, with Ralph Yarborough as the nominal leader, became a major political force for the next thirty years or so. If you told someone you were a Yarborough Democrat, no further explanation was required.

Shivers won, of course, in 1954, but by then, without my knowing it, my own course had largely been charted. I had fallen in love with Ann Willis in my senior year of high school, and at the advanced age of nineteen years, Ann and I married at the end of our junior year in college. Our parents were appalled at this youthful undertaking, but that was the way things were done in that era. Most of our high school chums were married by the time they were twenty-one years old. Heaven knows what was in our minds, but I sense we were in a rush

to grow up and get about the business of life. Undoubtedly, the never ending threat of being drafted and shipped to Korea was a major influence on the behavior of many of us. No one, at least in Texas, ever even mentioned the notion of conscientious objection or slipping across to Canada or any of the other stratagems that became commonplace during the Vietnam War a decade later. Many of my friends went into college ROTC programs, thereby postponing the draft. I tried a couple of times to buckle down to the discipline of this military training, but I could not even bring myself to wear a uniform, much less attend drill. As a result, when Ann and I graduated from Baylor in 1954, my ass was headed to Korea unless I did something pretty fast.

For lack of anything better to do, I enrolled in the University of Texas Law School for the fall. I had no notion of what law school might entail nor, for that matter, what it might mean to be a lawyer. I just needed to find something to do that would forestall the draft. In those years, college attendance provided draft deferment, and admission to law school seemed to be available to any Texan who had managed to stumble through undergraduate school. Austin was then, as it is today, the epicenter of the state's liberal dissenting faction. The liberal champion Ralph Yarborough practiced law in Austin. The great dissenters J. Frank Dobie, Bob Montgomery, and Clarence Ayres were on the University of Texas (UT) faculty, much to the dismay of the Texas legislature. Ronnie Dugger was in the process of founding the *Texas Observer;* Willie Morris was the editor of UT's *Daily Texan;* and the writer Bill Brammer was skulking around on the fringes of the political literary world. Frankly, it was an exciting time to be in Austin, and Ann and I were both ready for it and glad to shake the dust of Waco from our boots.

At UT registration that year I joined the UT Young Democrats, my first venture into the political world. The club was then run by one of the murkiest people I have ever met, one Marion Shafer. He lived on Guadalupe Street (known locally as the Drag) just across from the university in a rat trap of an old house. As best I could determine his sole sustenance was Coca-Cola, which he drank constantly. Marion had a law license, but I never saw any evidence that he used it; all he seemed to do was scheme about politics. I later learned that he had published a legal treatise on Texas Civil Procedure and must at some point have had something of a career. The most immediate thing about Marion was that he was far too old to be running the UT Young Dems. The age limit for the club was forty, and Marion consistently claimed he was thirty-nine years old, an utterly incredible assertion. He had disheveled gray hair and rumpled old clothes, and he was certainly no longer a student. He was, however, an appropriate guide for my introduction into the clandestine nature of politics. Marion had devised, in this era before copy machines, a hand-held copier. It was a glass-covered box that required one to stand in the sun for thirty seconds and expose the document to be copied along with photosensitive copy paper. After the required exposure, you had to duck into the dark house and remove the copy, and then repeat the process for each additional copy needed. This was my first political task for Marion. He was in the process of devising a realignment of the Travis County voting precincts and needed enough copies of his proposed map for all the precinct chairs of the county. I spent a couple of days standing in the sun along the Drag producing the required maps. It was a perfect introduction to the grunt work of politics. Ann thought I had lost my mind, but I found I enjoyed the intrigue.

Over the summer a cabal emerged in the UT Young Dems to oust Marion and replace him with new blood. I was chosen, not because of any accomplishments but because I had not been involved in the previous year's internecine struggles. At the club's first meeting in the fall of 1955 I was promptly elected president, defeating Marion's chosen candidate. Ann graciously served as my parliamentarian to keep me out of the myriad procedural hurdles hurled at me by Marion's allies. Thus within the space of a year I got my first introduction into political warfare and had turned on my mentor, all of which helped prepare me for a lifetime in and around politics.

I shortly learned a valuable lesson: law is boring and politics is fun—1956 proved to be a critical year in Texas. I performed somewhat indifferently as the chair of Students for Stevenson at UT, but in the process I became increasingly exposed to the political life. In the governor's race, Shivers had been sufficiently tainted by scandals that he could not reasonably carry the conservatives' banner against Yarborough. Price Daniel had been elected to the U.S. Senate in 1952. The conservatives were desperate to fend off another Yarborough candidacy for governor. They managed to persuade Daniel to surrender his Senate seat and return to the state to challenge Yarborough. Daniel was narrowly successful in a bitter campaign. He defeated Yarborough in the Democratic primary runoff by some 3,000 votes out of 1,392,000.

This 1956 race was assuredly a high-water mark of liberal coalition politics in postdepression Texas. Jimmy Allred in 1936 had been the last hint of a progressive in the governor's office in Texas. Since that time the conservative business lobby had totally dominated the state's politics. Yarborough's race was purely and simply a major achievement of grass-roots politics. All of the money and all of the institutions were firmly against Yarborough. Every major newspaper had vigorously opposed him, as had every voice of the Texas establishment. Yarborough's voters represented coalition politics at its best: union workers, Black and Hispanic voters, and loyalist and liberal Democrats. The financing of Yarborough's campaign was perilous at best. J. R. Parten of Madisonville was probably the most substantial backer. Parten, a onetime UT Regent, was a prosperous rancher and oil man and one of the few free thinkers among the state's wealthy. Meaningful financial help was also provided by the banker Walter Hall of Dickinson and the enduring Texas scrapper Frankie Randolph of Houston. But in reality this was a shoe-leather, volunteer campaign. The loss was bitter, and many of us felt that the election had been stolen by corrupt election officials. But we had scared the bejesus out of the old guard and we were never going to be frozen out again.

Of almost equal import in 1956 was the internal battle within the Democratic Party. Until that year, the congressional leadership of Lyndon Johnson and Sam Rayburn had avoided these skirmishes, leaving the party in the hands of Shivers and the Dixiecrats, the segregationist wing of the Democratic Party. The Shivercrats, as we called them, were merely the Texas version of the states' rights movement that dominated southern politics in this era. In order for Lyndon Johnson to become a player on the national political scene, he had to maintain his political base at home without succumbing to the racism that dominated the politics of the state. That year, Johnson and Rayburn made a determined effort to capture the party machinery, assuredly in anticipation of Johnson's presidential bid of 1960.

Given the newfound strength of the Texas liberals, the Johnson organization had to make some accommodation, painful as it might be, with the liberal

loyalists led by Yarborough, Frankie Randolph of Houston, organized labor, and the Young Democrats. Any open alliance with the Shivercrats would have created major problems for Johnson at the national Democratic Party level, given Shivers's segregationist stance. The 1956 Democratic precinct and county conventions produced battles royal across the state, notably in the urban areas. Ann and I went to our first precinct convention, which was attended by hundreds and won by the Shivercrats. Ann squawked enough about the high-handed tactics of our opponents that they named me to be an alternate delegate to the Travis County convention. It was a sop, because alternates had no vote, but it did get me to my first county Democratic convention. The Travis County convention was controlled by a coalition of liberals and the Johnson people, and the Shivercrats were, according to custom, excluded as delegates to the state convention. State convention delegates were divided among the victors, and, to my surprise, I was made a delegate to the state convention on the liberal slate. Unfortunately, the distribution of tickets for admission to the state convention was controlled by Johnson supporters, and they refused to provide tickets to many of the liberal delegates. In those years of unit rule, one delegate could vote the entire delegation's strength, so by excluding liberal delegates from the convention floor, the Johnson delegates could assure control of the delegation and cast all of the Travis County vote without interference from liberal troublemakers.

I went to the state convention anyway, along with Bill Parsley, a fellow law student who had worked the precinct with me, later a member of the legislature from Lubbock. When we arrived at the convention site at the state fair grounds in Dallas, we were denied admission because we had no tickets. We located an open window in the women's rest room and finally made it to the convention floor. There we were given counterfeit tickets that had been printed the night before by two of Austin's most wonderful and lovable activists, Henry Holman, president of the Carpenters Union, and Jean Lee, the grande dame of Austin's liberal scene. In recent years, Henry has explained the counterfeit operation to me. A Scholz Garden habitué (as later detailed, Scholz's was the Austin watering spot of destination for liberals of that era) had alerted Henry that Shivers and Johnson had met at the Johnson ranch in the week before the state convention and planned to do in the liberals. Forewarned, Henry had printed hundreds of counterfeit admission tickets to ensure that liberal delegates could gain admission to the convention floor. For years I kept my stub EK13 as a memento. The plan worked, and the liberal delegates got to the floor before the constabulary guarding the doors learned of the ruse, by which time it was far too late to try to locate and oust the unwashed.

The convention was a marvelously chaotic affair. There were contested delegations from virtually every major county. The big delegations from Dallas, Houston, and El Paso were all in contest with competing groups from the liberal and Shivercrat factions. It fell to the convention itself to determine which delegates were to be seated. The Travis County delegation was closely divided between the Johnson forces and the liberals who, like me, had managed to sneak onto the convention floor. Every vote required a polling of the several hundred delegates. Each time the delegation was polled there was never agreement on the outcome. As I remember, Creekmore Fath counted for the liberal side and John Cofer for the Johnson group. Both were Austin lawyers long tied to their respective political faction. At the end of their tally, they would solemnly announce diametrically opposed outcomes. As a result,

Travis County's vote was never counted on any of the critical issues.

When the dust settled, the Shivercrats were ousted, and the party apparatus was reasonably in control of a tenuous alliance between the liberals and the Johnson forces. Johnson had not been able to maintain total control, however. Much to his wrath, Frankie Randolph had been elected to the Democratic National Committee from Texas, defeating Johnson's choice, Beryl Bentsen, the wife of Lloyd Bentsen. Randolph was not only the financial angel of the muckraking *Texas Observer*, but she was also the prime mover in creating a series of statewide political organizations that provided a framework within which Texas political liberals could find a voice. The most recent incarnation was the Democrats of Texas, which functioned as a liberal counterpart, and irritant, to the established official Democratic Party organization.

Any accommodation between Johnson and the liberals was short lived. Although the May convention determined party governance, a second convention in September was required to certify the party nominees for the November general election ballot. Chandler Davidson, in *Race and Class in Texas Politics*, describes the aftermath at the September convention in Fort Worth:

> Behind their backs, Shivers forces and Johnson made a deal. Yarborough, the liberal's standard-bearer, had narrowly lost his third bid for the governor's nomination to conservative Price Daniel, and evidence in several counties pointed to ballot fraud that might have changed the outcome. Shivers . . . spread the rumor that a liberal SDEC might oust Daniel as the nominee when it canvassed the primary vote and install Yarborough in his stead. . . . When the liberals arrived in Fort Worth, they found their two largest delegations—El Paso and Houston—facing a credentials challenge. Despite strong evidence that both delegations had been fairly selected, Johnson forces got them barred from the convention and conservatives seated in their place. Mrs. Randolph, the leader of the Houston delegation and Texas's sole national Democratic committeewoman, was never allowed to set foot on the convention floor. Liberals were completely shut out of the new SDEC. (p. 164)

These were the years of hardball politics, and I got an early baptism and never thereafter had much interest in the Marquis of Queensberry rules as a model for political combat.

The summer of 1956 also produced the first federal court order for desegregation directed at a Texas public school. An August order required immediate integration of the high school in Mansfield, Texas, a small town near Fort Worth. On the first day of school registration, crowds of white segregationists blocked the school grounds. Governor Shivers, by now a lame duck, sided with the segregationists. Among other steps, he issued a statement suggesting that the U.S. Supreme Court be given the task of enforcing its order and offering to stand in place of the local school board if the members were charged with contempt for failure to obey the court order. As a result of Shivers's actions, Mansfield was not desegregated in 1956, and in short order the state mounted a full-scale attack on the NAACP, which had sponsored the Mansfield lawsuit. In mid-September, at the request of Texas Attorney General John Ben Shepherd, a district judge in Tyler enjoined the NAACP from collecting contributions and filing lawsuits in Texas—all of which was palpably unconstitutional, but that didn't deter the establishment. Texas elected officials promptly aligned themselves with the massive resistance to integration that was sweeping the Old South and effectively preserved a segregated school system for a decade longer. It was well into the sixties before any real desegregation of the Texas public schools occurred, and even then the change

required a multitude of lawsuits as school boards and their lawyers dragged the issues through the federal courts.

Against this background the 1957 Texas legislature took up with gusto the full range of segregationist proposals that were being pursued all across the south, such as banning members of the NAACP from state employment, requiring "integrationists" to register with the state, and mandating approval of the voters before a school district could integrate. All of these measures were sheer nonsense, but they were politically popular. A spate of such bills passed the Texas house with a two-thirds majority and arrived in the state senate late in the 1957 legislative session. Out of nowhere, it seemed, State Senator Henry B. Gonzalez of San Antonio emerged to filibuster the bills in the senate. I was called late at night by Maco Stewart, a law school friend, to come to the capitol and lend moral support to the Gonzalez effort. Sitting in the senate gallery late at night watching the Gonzalez filibuster was electrifying. Here was the state's first and only Mexican American senator jumping directly into the path of the segregationist steamroller. Certainly, other members of the legislature had opposed the bills—many friends of mine in the Texas house had done so, most notably my longtime racquetball buddy Malcolm McGregor from El Paso, who voted against the entire segregationist package, as did other liberal Democrats such as Bob Wheeler from Tilden and Bob Mullen from Alice. Nonetheless, the dramatic role belonged to Henry B. His striking physical appearance only served to heighten the impact: dressed in an all-white suit, he stood before the legislators quoting the U.S. Constitution, to the disdain of most of his fellow senators. His efforts managed to derail part of the package, and he became an instant hero to many of us, for he was the first elected official to forcefully and openly challenge the system of segregation. Henry made a wonderfully quixotic race for governor in 1958 in which he continued his challenge to the old order. As this book was being written, Henry retired from Congress after a lengthy and combative career, and he has now gone on to his reward. It is unlikely that such a persona will pass this way any time soon. Henry Gonzalez was surely the leader of the pack. His breakthrough as a statewide leader set the stage for the gradual emergence of Mexican American political victories at all levels of Texas politics.

Already significant, 1957 also proved to be a signal year for Texas liberals on the electoral front. Price Daniel had given up his U.S. Senate seat in order to head off Yarborough's race for governor. The special election to fill the unexpired term was made to order for Ralph Yarborough. His campaign organization from the just-concluded governor's race was still intact and raring to go. At that time, Texas law provided that special elections were decided on a "high person wins" basis, with no runoff. Yarborough's opponents included the millionaire Bill Blakley, who had been appointed by Shivers to temporarily fill the Daniel Senate vacancy, and a host of others. Despite the overwhelming opposition of the state's power brokers, press, and moneyed interests, Yarborough won and began an illustrious Senate career. From a purely Texas point of view, Yarborough was principally responsible for legislation creating the Padre Island National Seashore and the Big Thicket National Park. Of most significance historically was Yarborough's vote for the 1964 Civil Rights Act, the most meaningful civil rights legislation in our nation's history. He was the only senator from the eleven states of the old Confederacy to support its passage. This vote, along with other progressive actions, may have cost him reelection, for it was effectively used against him by Lloyd Bentsen when

Bentsen defeated Yarborough in the Democratic primary of 1970.

3
Off to Dallas to Practice Law

IN 1957 I GRADUATED from law school and was faced with the necessity to do something with my life. In those years, Austin was a sleepy little community, and there were no jobs available for young lawyers who had no particular connections. Thus a move was inevitable. To complicate matters, on the eve of my law school graduation, I received another of those unpleasant communications from my local draft board: an order to report for my preinduction physical. Ann, who had been teaching in the Austin public schools, was now pregnant with our first child, and her pregnancy spared me once again from the draft, but I was going to have to get a job. I had a brief flirtation with the Central Intelligence Agency, but that withered. So in the spring of 1957, I had no plan. I had never considered the possibility of actually practicing law as a way of life. The little I knew about law firms suggested they were all caught up with making money and performing meaningless tasks. One day, I scanned the bulletin board at the law school that announced job openings and saw a notice from a labor law firm representing unions in Dallas. My knowledge of law practice was so scanty that I did not even realize that such firms existed. I had worked with union people in politics, and I thought if I was going to try the law, being a union lawyer certainly seemed a tolerable option. Thus, I became part of the Mullinax & Wells law firm in Dallas, four partners and me. If there was such a thing as a radical law firm in the 1950s, this was it. William Kunstler was still practicing insurance law, and radicalism in the law was almost unknown, certainly in Texas.

The principal partners of the firm were Nat Wells and Otto Mullinax. Nat had been an attorney in the early years of the National Labor Relations Board (NLRB) and had successfully prosecuted Ford Motor Company and the Ford thugs in a battle royal that grew out of the United Automobile Workers (UAW) organizing drive in Dallas in the late 1930s and early 1940s. He had resigned from the labor board in 1947 in protest of what he believed to be the anti-union Taft-Hartley Act. Otto Mullinax had graduated from law school in the 1930s with a determination to press the progressive agenda. He had run for the legislature from his East Texas home, was trounced in a red-baiting campaign, and subsequently gave up any political ambitions. When Otto came back from World War II to practice law, he did the unthinkable. He filed a police brutality suit against law enforcement officials in Nacogdoches in deepest East Texas. The suit on behalf of a returning Black serviceman was simply unheard of in that era, indeed not much heard of even today, fifty years later. During the course of the trial, Otto and his client were afraid to spend the night in the county and took lodgings elsewhere. Such were the times that Otto carried a gun with him at all times for protection. The suit was inevitably lost, but Otto's determination to attack injustices never wavered.

The firm had been founded in 1947 with the goals of representing unions, furthering the progressive ideal, and making a reasonable living. The first two goals were readily met; the third was, to my mind, addressed somewhat indifferently. My baptism was immediate and intense. Jimmy Hoffa had

recently been elected president of the Teamsters Union, and the firm represented the Teamsters throughout the south. A federal court in New York imposed a trusteeship on the Teamsters Union, and Nat Wells was named by the union to be its representative on a three-member board of trustees. Nat seemed to be gone constantly, and the pressures on the firm were unrelenting. Strikes, injunctions, and grand jury investigations of the Teamsters were the rule of the day. In the twelve years I was with the firm, I do not recall that the intensity ever subsided. Consequently, I received a remarkable initiation into the practice of law.

In truth, my first years of practicing law were a total terror to me; I was scared out of my wits most of the time. I swear, the first day of work I was the only lawyer in the office and I got a call from a painters local union business agent wanting language for a picket sign. I had no idea in hell what to put on a picket sign other than "Workers of the World Unite." It seemed to me that every day for years was the same thing: I was constantly facing questions I could not fathom. I might have been just as afraid if I had been engaged in conventional law, but in this field I was surrounded by raging anger at all times. Otherwise decent people come totally unhinged when they suddenly find a union in the midst of their employees. Thus it seemed every case was of titanic proportions, a take-no-prisoners kind of deal. Of course, none of the partners was of the stable sort. Each had his own messianic notions and unalterable opinions. The firm conferences were often more explosive and unsettling than taking some Teamster business agent before a federal grand jury. That's the way it was, and only years later did I realize that there could be a more serene way to do things.

Our daughter Cecile was born in the summer of 1957, the year Ann and I both turned twenty-four years old. Parenthood, living in a large, hostile city, and taking on a new and frightening job were overwhelming changes for both of us. The next two years went by in a total blur. By the summer of 1959, we had purchased a small house and welcomed the birth of our son Dan. We had at least in small measure moved into the roles of traditional young families, although few Dallas suburbanites shared our brand of liberal politics. The election year of 1960 was close at hand, and our sole involvement outside work and family was politics, largely through the Young Democrats, which for the moment was in the hands of anti-establishment liberals. As the 1960 Democratic National Convention approached, we seemed to be in a constant rear-guard action to maintain control and prevent the organization from being taken over by what we deemed to be the Johnson people. Oscar Mauzy of my law firm made a determined run for national president of the YDS, losing narrowly in a heated race. We believed, with some justification, that Johnson political operatives had sabotaged Oscar's campaign. It made sense that Johnson would not want an anti-establishment Texan such as Oscar to be national president of the Young Dems on the eve of the 1960 Democratic National Convention. Ann and I were fully engaged in Oscar's campaign at the Toledo YD convention. I even managed to distinguish myself by getting into a fist fight with one of Oscar's Texas opponents in the lobby of the convention hotel. We took matters very seriously in those years.

The principal issues that separated us from the party rulers were race relations and loyalty to the National Democratic Party. Texas YD meetings were frequently punctuated by shoving matches, name calling, and walkouts, as we slammed through some pro-integration resolution or any other slap at the ruling

orthodoxy. Our wing of the organization was one of the few integrated forums in the state at that time. In 1959, the Texas YDS got a measure of revenge by having as our keynote speaker Senator Albert Gore of Tennessee, at the time one of the Senate's most prominent anti-Johnson spokesmen. But the Johnson favorite-son operation was in full swing. The Texas legislature, at Johnson's insistence, had moved the primary elections from July to May so that Johnson could have in his hands the nomination for his Senate reelection by the time of the national convention. The legislature had also authorized a candidate's name to appear on the ballot for two offices if one of those offices was president or vice president of the nation.

Party structure, then as now, began with precinct conventions held immediately following the closing of the polls on election day. Precincts were allocated delegate strength on the basis of the number of votes cast for a party's nominee for governor in the preceding general election. This was long before the well-intended but somewhat disastrous McGovern rules that now affect party machinery. In those days, you elected your slate of delegates to the county convention and bound them to the unit rule, with no thought of proportionality. It was a winner-take-all scheme, with all of the delegates bound to support the choice of the majority. The same practice prevailed at the county conventions held the following week. If you won at the county convention, you simply eliminated delegates from the precincts who were unfavorable to your candidate or cause and sent on to the state convention a simon-pure delegation of your adherents. In a one-party state such as Texas was at that time, this methodology produced some unhappy results for Democratic Party loyalists, particularly in presidential election years. All too frequently, the delegates to the Democratic National Convention would return to the state after the national convention and promptly endorse the Republican presidential candidate. This, in its simplest terms, was what the party loyalty issue was about. We had a state full of officeholders, elected as Democrats, who routinely publicly supported the Republican presidential candidates.

In the early spring of 1960, Texas liberals organized once again to do battle for control of the state Democratic Party organization, principally under the leadership of Frankie Randolph. The premise was coalition politics, with significant representation from the Black and Mexican American communities and the essential glue supplied by organized labor, whose membership was active in precinct politics, particularly in the Houston and upper Gulf Coast area. An agreement was reached that party loyalty would be the linchpin; resolutions would be introduced at the precinct, county, and state levels binding delegates to support the national presidential nominee. If the resolutions failed, rump delegations would pursue the issue from start to finish. The ultimate goal was to be able to present a competing delegation from Texas to the Democratic National Convention and to argue that we should be seated in place of the conservative establishment's delegation.

In those years, each convention was a law unto itself, for there were no rules that carried over from year to year. The process began with the naming of a temporary credentials committee, which was empowered to evaluate contested delegations and determine which of the competing delegations was to be seated and entitled to vote on convention business. In stark political reality, the political forces that controlled the temporary organization of the convention dictated the outcome. If they wanted your delegation seated, you might well be seated irrespective of the merits of your claim. These battles had been played

out in Texas for many years, and the rules were well understood. Needless to say, most of the liberal Democrats arrived in Austin for the 1960 state convention in rump delegations.

One of the first things to greet our eyes was a banner stretched across Congress Avenue proclaiming "Lyndon Johnson a Leader to Lead the Nation." Having felt kicked around a bit over the years, many of us were rankled by this message, probably more than we should have been. As day turned to night, we gathered where malcontents traditionally found their solace in Austin—Scholz Garden. By closing time, being in a fairly well-lubricated state, we concluded that our only appropriate recourse was to cut the sign down. A knife was borrowed from the waitress and a plan formed: two of our younger spirits would crawl onto the balcony of the Stephen F. Austin Hotel and cut the lower rope that secured the sign. Bill Kilgarlin and I, waiting in the street below, would seize the rope and pull the entire sign to earth. Ann, Bill, and I left the Garden in Bill's open touring car, somewhat oblivious to the attention we were attracting. Remarkably, the first phase went according to plan. Our cohorts, Jim Simons and George Dixie, both law students at the time, managed to reach the balcony and cut the rope, which then swung just before my eyes. Blessedly, before Bill and I could deliver on our share of the arrangement, some young man who had followed us grabbed the rope and swung on it right into the arms of Austin police, who had materialized out of nowhere. We managed to melt into the darkness. Later that night I secured the release from jail of our colleagues. I was admonished by an Austin police lieutenant that though he was sympathetic, for he felt his precinct convention had been stolen by the Johnson people, nonetheless, Mayor Tom Miller was not going to tolerate any conduct that embarrassed LBJ that weekend. Certainly, none of us that balmy Austin evening would have dreamed that Ann and Bill would one day end up respectively as governor of the state and a justice of the Texas Supreme Court. Ah, youth.

The next day, labor cut a side deal with the Johnson forces, abandoning pursuit of the party loyalty issue and leaving the rest of the coalition high and dry. The rump protest went forward, but with most of its steam gone, and anyway, it was too hot in Zilker Park, the site of the rump meeting, to be very enthusiastic. In the end, we repaired to Scholz to lick our wounds and sing "We Shall Overcome."

Lyndon Johnson was, as we know, taken on the Kennedy ticket as vice president in an effort to hold Texas and some of the South. Jerry Holleman, president of the Texas AFL-CIO (American Federation of Labor and Congress of Industrial Organizations), who had reached the accommodation with LBJ, became an under secretary of labor in the Kennedy administration, serving under Arthur Goldberg. When fund-raising issues later arose concerning Texas con man Billy Sol Estes, the controversy had the potential to embarrass both Johnson and Goldberg. Holleman, like a good political soldier, took the hit, resigned, and returned to Texas, where he ended up a management consultant on labor relations. Politics is not a game for the faint of heart.

4
The 1960 Election:
The New Frontier Beckons

BY THE TIME of the November 1960 general election, Dallas was already well on its way toward the right-wing lunacy that beset the city for so many years. Four years earlier, Dallas had elected a Republican congressman—Bruce Alger—and he was an appropriate spokesman for the anti-Kennedy fervor that pervaded the city. Shortly before the 1960 election, the unthinkable occurred. During a campaign appearance in Dallas, Lyndon Johnson and his wife, Lady Bird, were surrounded by an angry, shouting crowd of Alger supporters who had been campaigning on downtown street corners. Accounts of the incident varied widely, but it seemed clear that the couple were cursed at and jostled, and that Lady Bird was struck by an Alger sign, probably inadvertently, but the damage was done. Courtesy to lady folk was still a tenet of Texas custom, but little remorse was forthcoming from the Alger crowd. Given the closeness of the Texas election and the publicity attending the incident, this event surely contributed to Kennedy's narrow win in Texas and in the nation.

For our own part, any bitterness arising from the internal party squabbles had long since dissolved, and Ann and I worked on various Kennedy-Johnson campaign endeavors. Our law firm, I remember, was trying to decide how best to contribute financially to the campaign. Oscar Mauzy urged, and we agreed, that the most significant value would come from spending the funds in the Black precincts in an effort to generate election turnout. This was my first real confrontation with the single truism of politics that all elections are won by turnout, and it only makes sense to try to turn out the votes in the precincts where your voters are to be found. Support for the Kennedy-Johnson ticket among Black voters was, of course, in the 90 percent range.

Republican strategists saw the Black vote in the same fashion. Their strategy, as we saw it, was to deflate that vote. It had become a standard election-day tactic for Dallas Republicans to send election-day poll watchers into the Black precincts. Their claim was that the watchers were sent because of the high incidence of fraud in those precincts—a claim that, to my knowledge, was never substantiated. Our view was that the purpose of the watchers was to intimidate the Black election judges and gum up the works. In fairness, our view was never truly substantiated either, but the impact was real enough and the presence of the hostile white Republican poll watchers inevitably caused ill feelings at the polls, longer lines, and frustrated voters. Our response was: they send suits, we send suits. The typical Republican poll watcher was a young white lawyer from some downtown highfalutin law firm. We would send as a countermeasure some white, in-your-face plaintiff's lawyer. As a result, I spent election day 1960 in a Black voting box in south Dallas fending off young Republican lawyers so that the Black election judge could run the election in relative peace. No one ever knows what helps and what doesn't in politics; you simply do everything humanly possible and hope for the best. Nevertheless, the Kennedy-Johnson ticket carried that South

Dallas precinct by a ten-to-one margin.

One of the most lovable Texas political rogues was Woodrow Wilson Bean, county judge of El Paso County. Woodrow, among other dubious claims, asserted kinship with Judge Roy Bean, the famed "law west of the Pecos." Whatever Woodrow might have lacked in propriety was more than made up for by large doses of guile and chutzpah. Woodrow was chair of the Kennedy-Johnson campaign for El Paso County, and it fell to him to arrange a last-minute airport rally for Kennedy as he winged his way to the confrontation with the Houston ministers who were concerned that the pope might take over the U.S. government. Rallies for candidates are a necessary evil of politics; they can provide a big morale boost, among other things. The trouble with such rallies is the difficulty of producing crowds on short notice, often at remote locations and odd hours. The El Paso airport rally presented all of those challenges, but Woodrow quickly saw the simple solution to producing a crowd. He instructed the administrator of the El Paso County jail to clean up his minimum security prisoners and get them ready for a bus ride. When Kennedy's plane arrived in El Paso, he was greeted by a wildly cheering crowd of jailbirds waving "Viva Kennedy" signs. To ensure enthusiasm, Woodrow had had the foresight to fortify his crowd with a few shots of tequila, thus, a good time was had by all. Legend has it that Kennedy was so buoyed up by his El Paso reception that handling the Houston ministers was a breeze.

Politics creates many footnotes, and Woodrow is no exception. In 1962, he seemed the odds-on favorite to win a congressman-at-large seat from Texas, when fate stepped in and it was revealed that Woody had not filed an income tax return for the past twenty years. His explanation that he was simply testing the constitutionality of the income tax neither saved the election for him nor prevented his conviction. Happily, Woodrow completed his criminal probation and was later elected to the State Board of Education, where he loved to say he was serving the schoolchildren of Texas.

The Kennedy election transformed the world in our eyes; suddenly change seemed possible, but, of course, we were young. It became imperative to go to Washington to be part of the new frontier, whatever that meant. Dallas was a drag, and Washington looked exciting. With the help of Harry McPherson, a law school friend on Johnson's Senate staff, I got a foot-soldier job with the U.S. Commission on Civil Rights. Everything about the move was impractical: I gave up a partnership-track position in the law firm, we sold our house, grabbed the kids, and took off. We were installed in a mildly decrepit row house on Capitol Hill within a month of Kennedy's inauguration.

Once during our Washington stay, Ann's mother visited. She sat by the window one day watching the street life and finally exclaimed, "My God, I've never seen so many niggers in all my life," probably an apt description of the neighborhood and reflective of what Ann overcame to hold the views she did. Ann and I found it all exhilarating; for me, the best thing was the location of my office in an old building fronting Lafayette Square. Even though my work was largely tedious, there I was, directly across from the White House, where a sense of great events swirled in the air. Unfortunately, though great events might have been swirling elsewhere, not much was going on at the Civil Rights Commission.

For me, civil rights was the incandescent issue of the day, and I desperately wanted to be part of the action. The Commission had been created during the Eisenhower years as a somewhat meaningless study group with no authority

except to make recommendations to Congress. As we now know, civil rights issues were not a priority with the Kennedy administration, which was much more concerned with mollifying southern Senators. As a result, there was no impetus, inside or outside the Commission, to push the limits of its authority. So it seemed to me that, at a time when civil rights issues were being played out in the streets, I was writing meaningless reports. In the year I remained in the job, I can recall only one matter of consequence. I was dispatched to Atlanta to do a survey of discrimination in the labor movement. I remember feeling slightly uncomfortable as I went into all-white union halls to inquire as to the union's performance on racial issues, for these were still the days of Klan rumors throughout the South. I encountered no problems and learned one lesson that all lawyers eventually discover: if you ask questions, you never know what answers you will get. While interviewing the business manager of the electricians local in Atlanta, I asked why there were no Negro electricians in the union. The answer was straightforward: "All niggers are afraid of electricity." Of course, such attitudes went a long way to explain why there were virtually no Blacks employed in the entire electrical construction trade in the nation or, for that matter, in any other skilled jobs in the construction industry.

There were plenty of Texas friends around, so we did not lack a social life and at least had the feeling we were in the midst of things. Bill Brammer was then in Washington, working for Johnson during the day and staying up on speed at night, writing *The Gay Place*, which was to become the definitive Texas novel of our era. Larry King was working for Texas Congressman Slick Rutherford and was in the infancy of his writing career. Together with the friends that congregated around Harry and Clay McPherson, this group made for a stimulating social life.

I suppose everyone has his or her own LBJ story, and I have mine. Ann and I were invited to dinner by a young woman who worked on Johnson's staff. She lived in a little Georgetown walk-up, and as we were seated in her tiny living room, I looked outside and realized the man himself was coming to the gathering. Although I had tried to tear down his sign, I had never been in his company, and I remember emitting sort of an internal gasp. With Johnson's arrival, five of us were now crammed into a relatively small area, and it seemed to me that no one was going to say anything. Ann, who normally could take on any conversation, sat mute, as did Harry McPherson, one of the world's most charming men. For some reason, I thought it was my role to get the conversational ball rolling. Frantically casting around in my mind, I remembered a story I had seen in a recent *Texas Observer* about a visit to Washington by an old friend, Maury Maverick Jr. Maury's father had been a congressman from Texas, a fiery New Dealer, and also mayor of San Antonio. The story, as I recalled it, was flattering to Johnson, so I trotted out a reference to the *Observer* article as a conversational gambit. Regrettably, I had not remembered that the account contained a slight suggestion that Johnson had not been helpful in Texas during the McCarthyism era. Consequently, the onslaught began.

Did I not know that he, LBJ, had censured Joe McCarthy? While Mr. Maury Maverick was down in the Texas legislature, he, Johnson, had more important things to attend to, notably single-handedly bringing about the downfall of Joe McCarthy. On it went for what seemed an eternity. None of my comrades stepped up to defend me; they left me as the sole target of this withering

assault. It was a virtuoso performance, one that stuck with me forever. I don't recall how it ended, but I do know I was still in my chair and the evening somehow progressed without further incident.

In later years during the Johnson presidency, when I read press accounts of persons being subjected to the "Johnson treatment," I felt I had a sense of their predicament. The lessons learned from this were several, although some didn't sink in immediately. It dawned on me much later that none of this was happenstance. Johnson probably wanted to eyeball a couple of young Texans, such as Ann and me, just because he was obsessive, like most politicians. The more alarming message, confirmed by repeated and prolonged exposure to elected officials, is how nutty elected officials can become. Ego-driven to begin with, they become unhinged at the slightest criticism and perceive enemies behind every lamppost. The fact that Johnson was aware of, and cared at all about, a minor criticism in a tiny Texas journal struck me as bizarre at the time—and even more so today.

We were not long for Washington. The Commission was a peculiar place, at least to my way of thinking. Of course, it was my first experience within a bureaucracy, and I think I was overwhelmed by the caution that pervaded the place. Even so, I made lifelong friends at the staff level, people of passion and commitment. But for all our good intentions, nothing seemed to happen. Proposals for action seemed to die aborning when they hit the upper reaches of the operation. For example, as I was working in the employment field, I urged that the Commission recommend to Congress the enactment of a fair-employment-practices law. Commission studies had revealed rampant discrimination against Blacks throughout private-sector employment. My suggestion was rejected at the upper staff level as too radical. Ironically, three years later just such a law was pushed through Congress by President Johnson. But the Commission in its 1961 report to Congress had been unwilling to even recommend consideration of such a needed reform. So much for the cutting edge of civil rights.

Ann was patient enough to go along with my whims, and so, hat in hand, I returned to my old law firm in Dallas, swearing that I would go back to Washington some time, but only in a position with some clout. The firm had hired George Schatzki, fresh from the Washington office of the NLRB, to take my place when I fled to the New Frontier. I had briefed George on all of my files when I left and had given him written memos as to matters that needed to be done on the cases. When I returned to the practice eighteen months later, George returned to me most of these cases. In many of the files, the last item was my departure memo. Not one thing had occurred in my absence. This does not suggest a lack of diligence on George's part but rather highlights the overwhelming nature of the firm's practice that moved from one crisis to the next on a daily basis. The result was always that less urgent matters kept getting pushed to the back burner. Here I was greeted with many of the "dog cases"—as we call them in the industry—I had so gleefully handed over when I had split for D.C. Not much of a welcome home, but after the lassitude of the Commission, I was ready to jump back into the fray, so even the dogs were appealing.

5
Returning to Dallas Hat in Hand

COMING BACK TO DALLAS, after having left with such high hopes, was a bit tough. I was a bit bruised by my inability to make much of a mark in Washington. Moreover, Ann and I both despised the city, but the reality was that this was the one place I had a job to return to, and one that was in my field of the law. We bought a rambling house in University Park near Southern Methodist University (SMU), right in the midst of the most conservative section of the city, and jumped in with both feet. Our son Clark was born in May, shortly after our return, and the older kids went off to Unitarian preschool, about the only liberal institution in the city.

In 1962, the battle for control of the Democratic Party apparatus was still in full swing. I filed for precinct chairman in our neighborhood, ending up going door-to-door and winning the precinct—the first time liberals had ever won. The win was largely due to SMU faculty and students, but it was a heady victory nonetheless. Similar victories across the county gave the liberals a majority on the county executive committee for the first time. As usual, the victory proved Pyrrhic. The county chairman from the conservative wing simply refused to call the committee into session unless required to do so by statute. While I was venturing into the political arena, Ann became instrumental in forming the North Dallas Democratic Women, so politics again consumed us.

Dallas began that year to experience its first signs of racial disorder, if that's the term. No steps had been taken to desegregate the schools. The school board, aided by sympathetic federal judges, had been able to totally forestall any move toward desegregation. Restaurants still refused to serve Blacks, and Dallas remained a bastion of segregation. Finally, stand-ins were directed at the Picadilly Cafeteria downtown. In my first real-world encounter with the movement, I stood in a time or two at the cafeteria to protest the refusal to serve Blacks. My friend Shel Hershorn enlisted my aid to bail out Earl Allen, the Black minister who was leading the demonstrations. Although the charge was simply trespassing, a face-to-face meeting with Chief Curry of the Dallas Police was required to secure Allen's release. Shel, who was a most serious news photographer and ballsy beyond belief, got our revenge. He went along with me to the jail and managed to get a photo of the chief with Reverend Allen, much to the discomfort of Curry.

Ann and I also became active in a multiracial group known as the Dallas Committee for Peaceful Integration, a totally innocuous but well-intended forum for promoting change in racial attitudes. A reasonable clue as to the times was disclosed some years later when a member of the group stepped forward and announced that he had been an undercover functionary for the FBI. One of the organizations that he reported on was our little committee for integration. Shortly after the stand-ins at the Picadilly, the Dallas establishment decided that this controversy was bad publicity for the city, which was rapidly becoming a major national economic force. Almost overnight, the word went out that it was no longer acceptable to exclude Blacks from downtown eating

establishments. Although we certainly derided the Dallas oligarchy, they could get things done once they decided that Dallas business interests were at stake.

The more significant 1962 returnee to Texas from Washington was John Connally, who resigned as secretary of the navy to come back to Texas and run for governor. Because of his longtime ties to Johnson, we always assumed that he had been dispatched to Texas to preserve Johnson's home base. Whatever the reason, Connally certainly brought a significant change to Democratic primary campaigns in Texas. For the first time in my memory, the leading establishment candidate, in this case Connally, openly courted votes from Blacks, Mexican Americans, and organized labor. At the time, we thought the members of those groups that endorsed Connally were the worst kind of sellouts. I am sure that whenever the opportunity arose I told them so. In hindsight, that campaign was a major breakthrough. Suddenly, it was all right to have Blacks and Mexicans, and even labor guys, sitting at the head table. I remember remarking to Harry McPherson some time later how impressive I thought the Connally strategy had been. Harry opined that he thought he knew the source, a remark that left me convinced of Johnson's deft hand at play. Obviously, the strength of the liberal coalition had been recognized, and it was time to cut a few from the herd.

The 1962 primary was a humdinger. Connally led the field, which included the incumbent Price Daniel, Attorney General Will Wilson, the lunatic General Edwin A. Walker—who had been cashiered out of the army for his right-wing proselytizing—and an unknown Houston lawyer named Don Yarborough, always referred to as "no relation to Senator Yarborough." The runoff between Connally and Yarborough was tight to the wire, with Connally winning by some 25,000 out of a million-plus votes. Clearly, Connally would not have won without his successful wooing of breakaways from the old liberal coalition. In those years, no Republican primaries were conducted and there was no requirement of party membership to vote in the Democratic primary, so the primary essentially involved the entire electorate. The size of the Yarborough vote reflected the potency of the liberal coalition that had emerged from the battles of the 1950s and the drawing power of Senator Yarborough's name, albeit attached to a stalking-horse.

By the beginning of 1963, Dallas was getting to be a scary place. Right-wing hysteria seemed to be everywhere. Godfrey Hodgson, in *America in Our Time*, described it as a "city seething with the anger of the Right against the Supreme Court's desegregation decision" (p. 6). Having lived through 1963 in Dallas, I have often tried to reconstruct how a place could become so unhinged. General Edwin A. Walker had moved to Dallas and made it the headquarters for his ranting about Commies under the bed. He was certainly among kindred souls. H. L. Hunt was using his oil millions to finance right-wing publications on every street corner, and at about this time he published his view of a utopian society in a book known as *Alpaca*. In Hunt's perfect society, every voter's vote would be weighted on the basis of the individual's wealth, so that a working man might have one vote in elections while wealthy citizens might have a couple of dozen votes. No member of the Dallas hierarchy seemed particularly alarmed by this notion. One issue that seemed to especially incense the natives was our government's proposed embargo of Rhodesia because of its racist policies. Walker took to flying the Rhodesian flag in front of his house on Turtle Creek, as well as the American flag upside down, as a distress signal. The red scare continued unabated. By this time, Tito had begun his break with

Moscow and, as an attempt to aid his break, the United States was training some Yugoslavian pilots at a base in this country. This strategy was loudly proclaimed as treasonous by many of the Dallas establishment. By 1963, the Goldwater for President movement had taken firm hold in Dallas, and some neighborhoods in North Dallas were awash in a veritable sea of the red-and-gold Goldwater signs.

An early reader of this memoir chided me a bit about being too harsh on the Dallas of this era, but I think I have it about right. Another Texan, Larry McMurtry, expressed his view of Dallas in his essay "A Handful of Roses," included in his collection *In a Narrow Grave*:

> In Dallas the ruling oligarchy is old, cagey, and so well-entrenched as to be practically invulnerable to rude invasion. . . . In Dallas a flavorless Protestantism seems to have yielded super-patriotism as a by-product. The Dallas true-believers have made conservatism a religion-surrogate: they hate liberals the way passionate religious dogmatists once hated heretics. Orthodoxy is the American way of life as lived in Highland Park, and Earl Warren, among others, should be sent to the stake. Indeed, J. Evetts Haley drew wild applause for suggesting that Warren should be hanged. (p. 131)

I have always believed that the print media, at least in those years, had a substantial impact on the mood of a community. The *Dallas Morning News* was at the forefront of the hysteria. The paper still had political columnists writing "darkie" jokes, and the editorial page single-mindedly assaulted Kennedy and his administration. I wrote a letter to General Walker expressing my views of his idiocy, and for some weeks thereafter I would see cars circling the block as their occupants peered at the house. Of course, being a lawyer for the Teamsters Union did not contribute to my popularity. To maintain sanity, Ann and I consorted with a wonderful, hardy band of liberals who huddled together and managed somehow to laugh at our predicament, at least until the fall of 1963.

Adlai Stevenson spoke in Dallas in September 1963 at a United Nations Day function. In those years, two rather common billboards around the city proclaimed "Get the U.S. Out of the U.N." and "Impeach Earl Warren," reflective of the city's political mood. Ann and I went to the speech, which was held in a municipal facility. When we arrived, the crowd seemed large and restless, but we had no clue as to what was in store. During the introduction of Stevenson, organized disruption began. First, well-dressed young matrons began to jangle their arm bracelets, drowning out the speaker. As Stevenson appeared, the noise became overwhelming. The objectors had seated themselves in the center of the auditorium, and they began to rise and leave in unison, forcing those who wished to stay to stand to let them pass. In the midst of this bedlam, a long banner was unfurled behind Stevenson which proclaimed, "Get the U.S. Out of the U.N." The banner was positioned on the stage in such a way that it seemed as if it could only have been placed there with the assistance of city personnel in charge of the facility. At this point, a man leaped up on the second row and began to shout through a battery-powered speaker about Yugoslavian pilots and communist conspiracies. Almost immediately, an old friend of mine, Pancho Medrano, a burly UAW staffer, got up and began to climb across the rows to grab the heckler. The last thing I remember is leaping up and screaming, "Get him, Pancho!" When Ann and I finally got out of the hall, we faced a group of men dressed as Nazi storm troopers marching in the lobby. By this time my grip on sanity was faltering, and I went head-to-head with one of the Nazis. Weeks later, after President

Kennedy's assassination, I was convinced that my confrontation had been with Lee Harvey Oswald. I recount this impression not because I believe the storm trooper was Oswald, but to try to emphasize just how deranging the place called Dallas could be in 1963. The Dallas demonstration had been so unnerving that Stevenson urged Kennedy to cancel his fateful Texas trip.

President Kennedy's Dallas visit produced the bickering that seems so endemic in politics: Who speaks? Who gets recognized? Who sits at the head table? Who gets tickets? There are not many rewards for political work, and perhaps it is understandable that these relatively minor recognitions become so prized. Of course, all the old reactionaries who so reviled Kennedy wanted to be seated in a place of prominence. On the day of Kennedy's arrival, a full-page ad—sponsored by some of Dallas's more notable right-wingers—accusing him of treason appeared in the *Dallas Morning News*.

Ann had been able to score a ticket to the Kennedy event and was awaiting his arrival at the reception. I walked over from my office to see the motorcade at the corner of Main and Ervay. The scene was a disaster. For whatever reason, incompetence or malevolence, the Dallas police had not cleared the street of vehicles. A city bus angled away from the curb was partially blocking Main Street, and no meaningful crowd control was in evidence. The presidential motorcade passed at an unusually high speed, I assume because of Secret Service concerns about lack of security under the disorganized circumstances.

I walked the block back to my office and there learned of the assassination. In our office, immediate thoughts were of some right-wing putsch. Worrying about the welfare of my children, I fled home as quickly as I could to the sound of sirens wailing across the city. Cecile made it home from the first grade, and Ann eventually got through the crowds and back to the house. I was totally frantic until we were all safely together. The next few days were incredibly intense as we sat huddled in front of the TV, trying to piece together what had happened.

My partner Otto Mullinax was called and asked by the ACLU to go see Oswald to see if he wished legal representation. Oswald sent back word from his cell that he did not want to have anything to do with an ACLU lawyer. Then, of course, before we could begin to reclaim our sanity, Oswald was shot on TV before our very eyes. By the end of the weekend, I had consumed all the alcohol and cigarettes that my poor system could handle and swore I would never smoke again—a pledge I managed to keep. Johnson was sworn in by Judge Sarah T. Hughes before he left for Washington, and I think we all sensed in our confusion that a massive leap backward had occurred. In fact, we were wrong in that assessment.

The aftermath of the assassination was mixed. The right-wing rhetoric in Dallas was muted somewhat, and a Goldwater sign or two disappeared. The Dallas establishment began the litany that this event could have occurred anywhere, and Dallas was just the unfortunate site. I was never persuaded by this line; it seemed all too clear that Dallas had fostered the anti-Kennedy, anti-Washington, anti-twentieth-century mood that provided the perfect, and perhaps only, setting for the Kennedy assassination.

Our house became a way station for visiting journalists who came to assess Dallas, pursue assassination theories, and otherwise drink in the scene. I suppose word got out in journalistic circles that if you hit Dallas, there were some liberals there who seemed to enjoy life. In all events, a fascinating crowd

passed our way in that ensuing year, and our house more than ever became a gathering place for the disaffected. Our tight little group of friends became even tighter, pervaded by a bunker mentality.

Dirty charades became our weekly diversion. We would gather at our house on Lovers Lane: Sam and Virginia Whitten, Phyllis and Jack Kultgen, George and Lorraine Schatzki, Fred Koenig, and whoever else was game. We would drink and eat and, once the kids were abed, begin the game. Between us we had so many kids, I can't imagine what we did with them all—stash them around our barnlike house I suppose. The rules were simple. You got to change one word in any given song, book, or movie title. All-time favorites included "Bungsmoke" and "With My Thighs Wide Open I'm Creaming." It wasn't as if we didn't know how to have fun. Sam Whitten, Jack Kultgen, and Fred Koenig were all tied to SMU as faculty members; George and I practiced law together. The women, as was done in those times, took care of all the kids we had managed to produce, sixteen offspring between the four families. We all had the same politics: George and Jack had been instrumental in forming the city's first ACLU chapter, the Whittens had been longtime ADA activists, and Ann had all of the women engaged in the North Dallas Democratic Women.

Our tight little island community was always willing to embrace new kindred souls. Thus it was that Moe Levy and Shel Hershorn, professional photographers of the era, came our way. Moe was a prominent CBS News cameraman of the time who had covered race riots in Birmingham and all manner of events. I remember being in Washington and seeing film clips of Moe being kicked across the street by Birmingham cops because he had attempted to film their beating of demonstrators. Shel was a big shot with the Black Star agency who took photos all over the country for *Time* and *Life* and had shot the *Life* cover for its report on the Whitman shootings from the UT Tower. They were both weirder than nine kinds of owl shit.

Moe anticipated the upsurge in demand for smut and made one of the early porn movies, back in the days of simulated sex. The movie *She Mob* was shot by Moe, I assume on CBS equipment, in Moe's north Dallas house. Ann and I and Oscar Mauzy and his wife, Aglaia, were accorded the honor of being invited, along with the cast, to the initial private screening of the film. Seeing the movie gave us a reasonable clue as to how kinky Moe truly was. The story line, written by Moe, concerned a lesbian gang that ran around in Valkyrie outfits—big metal-pointed bosoms and all that stuff. They kidnapped some hulk, dressed him in women's garments, and hung him by his hands from the ceiling so they could chastise him with switches. The Mauzys and the Richards were somewhat befuddled by the production, but Moe and the cast loved it, and the film went on to modest success in the porn circuit.

I met Shel Hershorn during my 1964 door-to-door campaign for reelection to precinct chairman. He and his wife, Connie, lived up the street on Lovers Lane, and I enlisted them as kindred spirits. Unfortunately for my campaign, Governor Connally decided to take an interest in ensuring the restoration of conservative control of the Dallas Democratic Party machinery. Connally, having been wounded in the assassination assault, had become a one-man political blitzkrieg. Our dear friend Mike McKool was running for county Democratic chairman in an extremely well-run campaign, and the Connally forces crushed him. They didn't stop there, however, but pursued the liberals down to the precinct level. As a result of my election to precinct chair in 1962, I was in charge of the primary election in our precinct. As I greeted voters as

they came to the poll that day, I sensed an overwhelming hostility directed at me that I couldn't fathom. After losing that day's balloting, I learned that all the voters in the precinct had received a mailing over Governor Connally's signature warning them that their precinct chairman—David Richards—was a lawyer for Jimmy Hoffa's Teamsters Union. Even my boundless charm was not adequate to overcome that message, and the voters duly elected my opponent, a neighborhood dentist. Shel and I didn't take the loss that well. A few weeks later, after some late-evening beers, we decided to toilet-paper my opponent's house. Thus it was that late one night found us on Lovers Lane heaving rolls of toilet paper into the trees of the dentist's yard. Our careers, such as they were, were spared when we managed to escape detection and chortle our way back to Shel's house for more beer.

By the late sixties there seemed to be a collective, although not expressly agreed upon, judgment that we had "done" Dallas. The Schatzkis headed for Boston for George to do graduate work at Harvard Law School; Fred Koenig took off to teach at Bennington; Jack Kultgen took a chair in the philosophy department at the University of Missouri; and the Whittens headed for Austin, where Sam began teaching at the UT School of Library Science. Shel Hershorn announced that he was getting rid of all of his high-priced cameras and was going to buy a box camera and a horse. His plan was to change his name to Cotton McComb and travel around to shopping centers and county fairs, taking pictures of little kids on his horse, which he planned to name Sweet Bess. Shel disappeared shortly thereafter, to resurface in Taos some months later as a semistoned guru. It was fairly evident that the old scene was disintegrating before our eyes. Ann and I looked around one day, and we seemed to be the only survivors, but we were not long for Dallas either.

6
Representing Labor Unions in Dallas, Texas

OUR FOURTH CHILD, Ellen, was born in 1964, and our rambling house was full. Ann, I am sure, was overwhelmed by the demands of maintaining a house bustling with four young children, and I felt besieged by a law practice that seemed to bring a new crisis every day. Perhaps it was the stresses of our daily lives that enabled us to survive in a city that was so hostile. Self-awareness has never been a major facet of my makeup, and I did not realize at the time just how draining were the Dallas years. Truthfully, years after leaving Dallas, I could return and drive familiar streets and feel my stomach begin to knot and flutter.

One purpose of this writing is to talk about organized labor as I saw it and knew it in the decades of the 1950s and 1960s. The movement seems to have fallen into disrepair in current times, and those earlier years seem particularly heady from the vantage point of forty years later.

Given the decrepitude of organized labor in Texas at the beginning of the twenty-first century, I suspect most Texans have little notion of the vitality of the early union movement. The Great Southwest Strike of the 1890s against Jay Gould's rail lines began in the freight yards of Marshall, Texas; armed company thugs ultimately broke the strike, but unionization followed shortly thereafter. The only recorded strike of cowboys in the United States occurred in the Texas Panhandle in the 1800s when three hundred cowboys went on strike for better wages and edible grub. In 1903, Thurber, Texas, became the only 100 percent union town in the state's history, following a strike against the Texas Pacific Coal Company. A fascinating book by Patricia Hill, *Dallas—the Making of a Modern City*, provides a grand account of early labor battles in Dallas. Even when I began my union lawyering in the 1950s, there were plenty of clashes to go around and a pervading feeling that you were part of an ongoing struggle to improve the lot of working people. Today it is hard to say.

By 1962 the labor side of our firm consisted of four lawyers: Nat Wells, Charlie Morris, George Schatzki, and me. George and Charlie left in the sixties to teach on law school faculties, and Fred Weldon joined our labor team. For years, we were knee-deep in lawsuits, strikes, and organizing drives across the South. Those were the Jimmy Hoffa days, and the Teamster representation alone would have been enough to drive most lawyers over the brink. My principal clients were the Teamsters, Garment Workers, Meatcutters, and various building-trade unions, primarily the Electricians and Plumbers. Union reps were about my best and only male friends. Carousing with union business agents does not take one to the same places as socializing with a lawyer's more typical corporate executive and banker clients. The crowd was a wonderfully irreverent, bawdy, and hard-boozing bunch who truly believed that working people deserved a better shot. The existing powers in Texas and the South were fully determined to stymie any effort to unionize.

Jimmy Hoffa was the foremost pariah during the 1960s; Bobby Kennedy had made getting Hoffa the number-one goal of his Justice Department. In an anti-union city such as Dallas, Hoffa's name caused virtual apoplexy. At the local union level where I devoted the bulk of my energies, I formed an entirely different impression. The Teamster locals that I saw were among the few unions vigorously organizing. The union had significant Black membership, and it seemed that no difference existed in the vigor of representation because of race. This was certainly not the case in many unions in the South, where Blacks were relegated to inferior roles or excluded altogether. Perhaps I saw it mistakenly, but my sense, then and now, was that Hoffa's commitment to protecting workers was genuine and did not fluctuate on the basis of race. The same was true of Dusty Miller, the vice president in charge of the Southern Conference of Teamsters, our primary clients. Teamster truckers were covered by national collective-bargaining contracts, and at Hoffa's insistence, these agreements had been renegotiated to eliminate wage disparities that had burdened Teamster members in the South. As a result, Hoffa's popularity among the southern membership was unparalleled. Although stories of mob involvement in the union surfaced constantly, I was too caught up in the struggle to pay such accounts much heed.

My exposure to the national Teamster hierarchy evolved as I became responsible for larger cases. The Teamster headquarters in Washington was a pretentious structure overlooking the Capitol, and someone had installed a French chef in the employee dining room—all of which was a far remove from the lifestyle of truck drivers I was representing back home. Nonetheless, it was a fascinating scene. Lawyers were everywhere, for Hoffa was either under indictment or the subject of a grand jury investigation at all times, and because of the constant labor disputes, mammoth damage suits were constantly being filed against the union. Finally, the pension fund was doling out huge loans to various dubious, seemingly mob-related ventures; hence, another whole set of lawyers appeared to be tied to that side of the operation. Everyone I dealt with assumed that all conversations within the international headquarters were bugged, either by the feds or Hoffa or both. As a result, most discussions were tinged with an air of unreality, and gallows humor permeated the scene.

Whenever the Teamster Executive Board met, lawyers' reports occupied a substantial portion of the board's business. In addition, regular Teamster lawyer conferences brought together local union lawyers from across the country for continuing-education purposes. These lawyers were the cream of the crop. Most had begun their union representation out of progressive ideals, and their clients included many of the major unions. The paradoxes seemed to abound. Meetings were typically held in the most fashionable Florida watering spots or similar resort locales. Hoffa, on the other hand, appeared to adhere to the strictest code of propriety—no smoking, drinking, or gambling and no flash; nothing but hard work. Everyone, lawyers and union reps alike, had the same concern: can we slip away to the racetrack or the beach without Hoffa spotting us?

I cannot believe that anyone exposed to Hoffa could come away without being in awe of the force of his personality. To meet with him was to get a decision: strike; don't strike; pickets will be honored in Chicago; this truck driver has to be put back to work or else you have problems. That's the way it went. He presided at the executive board meetings, standing throughout and questioning intensely whoever was before the board—lawyers, accountants,

union representatives—and making judgments. At one level, he was what one would wish for in a union leader: focused on the needs of the rank and file, eschewing the trappings associated with many union leaders, and willing to do battle for the union goals. Yet, lurking in the wings were characters who looked as if they had been sent by central casting for a mob confab: the Dorfmans from Chicago, Meyer Lansky, and equally notorious thugs. Fortunately for me, I dealt only on the upside of the union and profited greatly by exposure to the lawyers and the notions of militant trade unionism.

The Teamsters in this era played a central role in a seminal event in the emergence of Mexican American politics in Texas. The Teamsters had a contract with the Del Monte processing plant in Crystal City, Texas, the so-called spinach capital of the world. In 1963, a Mexican American slate took control of the city council of Crystal City, an event that shook the Anglo power structure of South Texas to its core. Although this victory, as did so many political triumphs, ultimately deteriorated into a variety of squabbles, the Crystal revolution signaled the beginning of dramatic change in the politics behind the cactus curtain of South Texas. Teamster money and muscle were at the core of the victory, and the incoming mayor, Juan Cornejo, was a Teamster member from the Del Monte plant. Hoffa was determined that the Teamsters be political players, and in the instance of Crystal City, the result was a major leap forward. Nor did the election victory end the Teamster role.

Shortly after Juan Cornejo's election as mayor, Texas Ranger A. Y. Allee appeared on the scene. Allee enjoyed the reputation of being one of the most brutal of a notoriously brutal crew of Rangers, whose role was to preserve the status quo in South Texas. In plain language, this meant rousting any uppity Mexicans. Chris Dixie, who related this incident, is a tale in himself. Chris and Otto Mullinax were young radicals on the UT campus in the late 1930s. After the Second World War, Chris started a law practice in Houston principally focused on union representation. At the same time, he was a fundamental force in all of Houston's liberal Democratic politics. Chris recounts that Allee confronted Cornejo in the municipal building, grabbed him by his shoulders, and shoved the mayor against the wall. After a bit of manhandling, Allee warned that if Cornejo got out of line, Allee would be back to do a real job on him.

Dusty Miller of the Southern Conference of Teamsters called Chris to hire him to sue Allee on behalf of Cornejo. Dusty explained that Allee had totally intimidated the new Mexican American majority of the Crystal City Council. Unless some action was taken against Allee, the political victory might go for naught. No lawyer in South Texas would sue the Rangers, so it fell to Chris to take on the case from Houston. Chris tried the case in federal court to a South Texas jury. According to Chris, Allee readily admitted roughing up Mayor Cornejo. Nonetheless, the jury came back with a verdict in favor of Allee. Chris realized that the jurors weren't disturbed by the Ranger's conduct because that's how South Texans expected Texas Rangers to deal with smart-ass Mexicans. It took a while to get there, but by and large the Allee days are a thing of the past, and unions played a primary role in fostering the Tejano revolution in South Texas.

My own alienation from the Teamsters came as a direct outgrowth of successful legal work for the union. Red Ball Motor Freight was the state's most prominent non-Teamster carrier; it had successfully resisted the Teamsters over the years, most notably at the time in a 1961 NLRB election.

The history of Red Ball and the Teamsters was fraught with strikes, blown-up trucks, and indictments.

My first exposure to the Red Ball workers occurred in the aftermath of the lost election. As is almost customary in most unsuccessful union organizing drives, the leaders of the Teamster effort were fired after the election. I filed charges on behalf of the fired workers with the National Labor Relations Board and ultimately won an order from the District of Columbia Court of Appeals requiring reinstatement of the drivers and an end to discrimination against Teamster supporters. All but one of the drivers accepted the company's settlement offer, which paid them back wages and a bonus to forego reinstatement; all were then working in Teamster jobs elsewhere, so it made practical sense to accept the Red Ball proposal. Gordon Hodgkins was the exception; it did not seem morally right to him to walk away from the battle. He was determined to go back to his old job at Red Ball, despite knowing that he would be the target of total hostility from all of Red Ball's supervisory staff as well as from many fellow employees who were loyal to the company union. In short order, Gordon appeared in my office with a young city driver in tow, Grady McBryde. The two of them had decided to continue the battle to organize Red Ball. By now the Teamster locals had lost interest, believing, I suppose, that renewed efforts would be futile. So I became the point man in the renewed organizing. The Southern Conference of Teamsters was happy to pay my fees, but otherwise didn't want to be bothered.

I warned the two organizers that if they resumed Teamster activity, sooner or later they would be fired and that even if they attempted to keep their union activities secret, the company would learn of them. The better course, if they determined to go forward, would be to put the company on written notice of their Teamster activity. Most of the employees were still members of the widely despised company union, and union dues were being withheld from their paychecks. We devised a short letter to the company, to be signed by individual employees, advising that they no longer wanted dues to be withheld for the company union and that the employee planned to work to bring the Teamsters in as the union. I cautioned Grady that he should get a notebook and make a record of any incidents that reflected discriminatory treatment toward him or preferential treatment of the company union guys. Frankly, at the time, I gave no particular thought to our strategy. It seemed to be a way to give them something to do.

Our approach proved enormously successful, and they were back for more form letters every week. As the weeks went on, I would receive nightly telephone calls at home from Grady or Gordon reporting on some new company outrage or success in recruitment.

This was a pure rank-and-file organizing effort, with no real union involvement except through our law office. It was far too successful. Predictably, Grady and some of his recruits were fired. Such employer moves are typical and calculated to stifle the organizing enthusiasm. They normally succeed, but not so in this instance. The NLRB issued a complaint charging discriminatory firings, beginning a process that normally consumes years—years during which the union activists drift away and the movement is expected to die. The trial before the NLRB hearing examiner was a virtuoso performance by Grady McBryde. He had followed my advice with a vengeance and produced notes kept on a daily basis that devastated the employer's arguments. These cases are typically tried on pretext theory, that is, the

employer's asserted reason for discharge is not the true reason; rather, it is motivated by retaliation for union activities. One of the most common ways of presenting such discrimination cases is to offer evidence that the reason asserted for the employee's discharge is not plausible. In Grady's case, the company claimed that he was fired because he had left freight that he was due to pick up at a shipper's place of business. Grady was able to testify, based on his notes and by providing names, dates, and places, that drivers who were loyal to the company union had committed similar, or more egregious, errors and had not even been reprimanded. He detailed these examples in one day of direct questioning and two days of cross-examination in a good-humored and devastating fashion; he was simply the best fact witness I ever observed. In Board proceedings such as this, parties are allowed to file written briefs; and as a result, some weeks passed before the examiner's decision was issued, crediting Grady's testimony and ordering him reinstated.

Henry English, a prominent Dallas citizen and a heavy hitter in Texas conservative Democratic politics, was then the chief owner of Red Ball. The NLRB decision was delivered around Christmastime, and Henry English simply blew his stack. He went out on the Red Ball freight dock in Dallas, full of Christmas booze, and announced to all within earshot that "that little note-taking son of a bitch is never coming back to work for Red Ball, I don't care what the government says," or words to that effect. Such things can happen when the boss acts beyond the constraints of his lawyers, who would have told him that such statements were in contempt of an outstanding federal court order, a fact English learned fairly shortly. Faced with contempt of federal court, English's resistance to the Teamsters collapsed overnight.

When it comes time to stop a fight, lawyers are at their most creative. In the space of days, we closed out almost a lifetime of disputes, lawsuits were settled and dismissed, the old company union disappeared, Teamster contracts were put in place for a thousand or so Red Ball employees, and Teamster Local 745 in Dallas had several hundred new members. All of this took place primarily because of the persistence of two truck drivers, Gordon Hodgkins and Grady McBryde. I suppose I thought we would be hailed as heroes by the local union leadership, but that was not the case. The officers were angry with me because I was getting credit for something they should have done, and they were threatened by having to absorb into their local membership a ready-made band of hardy dissidents. Shortly after the settlement, the head of the local told me that Hodgkins was a Communist, an epithet I had heard tossed my way, but one that seemed an unlikely charge against Gordon. One problem was that Gordon was British, had an accent, and tended to ask questions about why things were being done that way. Some time later, Grady was transferred from Dallas to Shreveport, apparently in order to accommodate Red Ball's management, who still did not want that little note-taking s.o.b. around.

People who stand up for their rights are troublemakers to management and union leadership alike. Grady and Gordon had literally brought about a revolution within a very sizable workforce; once the revolution succeeded, they became not only expendable but a source of concern for the establishment. Unfortunately, it took me a few years to snap to this notion, but the Red Ball experience that gave so much satisfaction signaled the end of my interest in representing the Teamsters, and apparently the feeling was mutual.

Two full-time union organizers stand out in my mind from those years: George Lambert of the Garment Workers and Franklin García of the

Meatcutters. George had come to Texas in the 1930s as an organizer for the Socialist Party. Frank had grown up around Dallas and had been drafted after high school. When he came back from Korea, he had gone to work in an aircraft plant, where he had become a UAW member and drifted into union activity. Both were tough-minded left-wingers, with a fine sense of the futility of it all.

The heart of the garment industry was then in New York City, but there were a few organized shops in Texas, and the ILGWU (International Ladies' Garment Workers' Union; or ILG) had either an express or an implied obligation to the New York industry to maintain organizing activity in the South. Lower-wage, nonunion plants in Texas were viewed by the unionized eastern industry as unfair competition. Undoubtedly, whenever the ILG sought wage increases in New York, they would face the employers' lament that we can't pay more because we are being eaten up by the nonunion shops in Texas, and so on. This is the nature of labor economics, whatever the industry. So George and I would find ourselves in some small town in Texas, such as Pilot Point, Cleburne, or El Campo, trying to make the best of a bad situation.

George was a genius at making the union presentable to working women in rural Texas. He would set up shop in some run-down motel, get out his typewriter and mimeograph machine, and go to work. In short order, he would make the union the most interesting operation in town through his regular newsletters. Gathering plant gossip about who was being promoted or what forelady got into a cat fight on the streets and scurrilous reports about the boss vacationing in Jamaica, he produced the liveliest writing the plant had ever seen. George could win union elections in those remote spots through his charm, intelligence, and hard work. But as we both knew, we lacked the economic muscle to negotiate significant collective-bargaining contracts. A strike for a better contract in those years was not feasible, and everyone knew it.

These garment workers were often the only source of household income, and there was no alternative employment in town if jobs were lost. So we would go through days of bargaining with some management lawyer who was perfectly happy to play the game at an hourly rate until we came to some bargaining deadlock over monetary items. By then everyone was pretty much bored with the deal, and we would disappear back to the city. On occasion, we actually produced a tolerable contract, only to have it turned down by the international union in New York as substandard, although we seriously questioned their ability to judge what was substandard in El Campo, Texas. Heaven knows whether we helped or hurt. Usually the union's appearance resulted in modest increases in wages and benefits, and perhaps we empowered and added excitement to some lives for a moment or two, but that's by no means clear.

A recent news story brought to mind these working women of small-town Texas. The story concerned the closing of the garment plant in a rural Texas town, as the jobs had gone overseas, along with most of the needle trades. One of the women losing her job sadly recognized that there were no more jobs left in these small towns except as attendants in the nursing home. I suppose what is substandard in one locale may well be the lifeblood in another.

George came to Texas as a left-wing organizer, and he covered the San Antonio pecan shellers' strike for the *Nation*. George was tarred and feathered by the Ford thugs in Dallas during the CIO organizing days, and he left behind a legacy of never abandoning the struggle. George and his wife, Latane, were

fixtures in liberal politics in Texas for years. Latane, who had been raised in the South in a somewhat religious background, loved to tell the story of how she described George's occupation to her mother. She likened it to a religious calling, explaining that George was much like a traveling evangelist. This slight distortion was apparently sufficient to calm parental fears.

George had one of his more creative hours during a strike in San Antonio at the Texon plant. The union had begun a consumer boycott directed at Joske's, the city's most prominent retailer, stationing handbillers in front of every entrance urging consumers not to buy Texon products being sold at Joske's. The store countered with attendants at every door taking the handbills and trashing them. George changed his handbills to balloons filled with helium with the message printed on them. The store was reluctant to take the balloons from the tiny children who were clutching them as they entered the store with their mamas. As the shopping trip went on, the children's grips frequently loosened, and suddenly Joske's ceiling was covered with a sea of bouncing balloons. Attendants were summoned and given spiked sticks to puncture the balloons. George's final riposte was to first fill the balloons with tiny strips of paper containing the don't-buy message, then when the balloons were punctured, down would flutter hundreds of tiny boycott messages. None of this helped settle the Texon strike, but it did at least lend some humor to the battle and was a testament to George's ingenuity.

Having talked of the ILG in Texas may entitle me to tell one of the state's more engaging stories of political lore that grew out of the union's presence. Maury Maverick had been a combative New Deal congressman from Texas and had gone on to become mayor of San Antonio, where he was responsible for much of the preservation of that city, including La Villita and the lovely River Walk.

Maverick was a longtime friend of organized labor and was in a tough reelection battle in the early 1940s. The International Ladies' Garment Workers' Union had unionized shops in San Antonio. The New York leadership of the union was primarily old Jewish men, and the union president, David Dubinsky, was a longtime power in New York politics. Dubinsky had sent some political money for Maverick's campaign. Maverick, with press in attendance, went into the garment shops with the union money in silver dollars —the poll tax was then $1.00—tossed the dollars on the sewing tables, and urged the workers to pay their poll tax and vote for him. Maverick, a better politician than a lawyer, had overlooked the fact that it was a crime in Texas to pay another's poll tax, which was simply one more of the various devices used in Texas to curtail voting, particularly among the poor. In all events, Maury lost his reelection and was shortly thereafter charged with the crime of purchasing the poll taxes.

I first heard this story from Harry McPherson, who described it as one of LBJ's favorites. I later confirmed it with my dearest friend, the renegade Maury Maverick Jr., and with an old ILG lawyer who had represented the union at the time, when Dubinsky was fearful of also being charged. Indeed, the old ILG lawyer added a fillip I had never heard. He had been sent by Dubinsky to meet with Maverick, probably in order to keep Dubinsky's name out of the deal. In any event, the lawyer had gone to San Antonio, traveling under an assumed name, and had been picked up by Maverick and his local attorney. They had piled into the car and headed directly for Nuevo Laredo, with Maverick and his lawyer pouring down whiskey all the way. My informant

described the evening as the most harrowing of his life, and he had never set foot in Texas again. Even thirty years later as he recounted the event, the lasting trauma caused by a little old run to the Mexican border was evident.

As the story goes, Maverick's criminal case is going to trial before a Bexar County jury composed largely of stolid German types, known for their probity and intolerance of misbehavior. Maverick, in a panic, calls the White House and gets through to President Roosevelt. He insists that the only person who can save him before this German jury is Alvin Wirtz, the godfather of the German community of Texas. Wirtz had been appointed by FDR to a subcabinet-level position in the Department of Interior and was then in Washington. Apparently convinced of Maverick's predicament, FDR turned to the young congressman from Texas, Lyndon Johnson, to use his persuasive powers on Wirtz to secure his attendance at the trial for Maverick. It took some doing, because Wirtz was scheduled to leave on vacation with his wife, but then, as always, Johnson's force prevailed.

Wirtz arrived in time to make the closing argument on Maverick's behalf. As the story goes, he stood before the jury for a period, gazing out toward the Texas Hill Country where many of the jurors' forebears had first settled, and then began: "Forgive me for a moment of woolgathering, but I could not help but think of our forefathers who settled this harsh land, contending against drought, hostile savages, and travail that would try the soul of any man. On the other hand, whenever they managed to get a little money in the bank, they found their money being spirited away from them by Jewish moneylenders from New York. Now, here we have in Maury Maverick a descendant of those early settlers who has managed to get some money out of those New York Jews, and the state wants to put him in the penitentiary for it." Maverick was acquitted.

I first came to know Franklin García in Democratic politics in Dallas, and later worked with him for many years after he became an organizer for the Amalgamated Meatcutters. Frank always managed to convey an air of mystery about his activities, as if there was a significant side to him that was never revealed. Some piece of him was pure pachuco; late in life, he grew a one-inch thumbnail, which he claimed gave him an advantage in fights. On the other hand, he was charming and tough and revolutionary. He managed to wangle substantial funds from an old-guard union for organizing efforts in South Texas. He was instrumental in bringing labor activism to that vast area and was in the forefront of the awakening of political activism all along the Texas border.

One seminal moment in the "awakening" was the La Casita melon strike in the late 1960s and the resulting 1966 farmworkers' march on Austin for a state minimum wage. Frank was by no means the only player in the grand Marcha, for, before the months-long trek from deep South Texas to Austin was completed, it had captured the enthusiasm of Hispanic and liberal activists all across the state. Ann and her dear friend Virginia Whitten even managed to persuade the local University Park supermarket to boycott La Casita melons. Those were the days.

Our family in those years traditionally did summer vacations at South Padre Island. Shortly before our departure for the coast in 1966, I saw Frank, and he urged me to come to Mission, Texas, for a kickoff dance for the farmworkers' march to Austin. I persuaded the family that this was a reasonable excursion from our South Padre vacation. I believe my most poignant memory of Cecile's

childhood took place on the drive south when she, probably nine years old at the time, told her mother excitedly that this was going to be her first dance. The VFW hall filled with Chicano activists on that hot evening was not every girl's dream dance, but in the case of Cecile, it probably suited her perfectly.

The march took most of the summer as it straggled up the several hundred miles from the Lower Valley of Texas. One astounding political event occurred as the marchers neared Austin. State officials, Governor Connally, Speaker of the House Ben Barnes, and Attorney General Waggoner Carr confronted the marchers near San Marcos to dissuade them from coming to Austin. The officials claimed that they could not protect the marchers from violence, whatever that meant. This was the historical approach to any political dissent in Texas: face the dissidents down and chase them off. The Texas Rangers had already been called out to harass the La Casita strikers, and this was simply another chapter in the old book. The upshot was a photo op that still leaves one breathless. Here was the governor in his fine suit, flanked by other representatives of officialdom, confronting the handful of marchers and the priest who was leading them, warning them to discontinue their months-long march. Needless to say, the warning was ignored, and the march concluded on the capitol steps in Austin, where the marchers were joined by thousands from all over Texas.

I came down with friends from Dallas and marched the last ten miles or so, and it was a glorious day. Remarkably, the march achieved a major, if somewhat symbolic, victory. The legislature actually passed a state minimum-wage bill in response to the march and the issues it dramatized, a previously unthinkable act, given the conservative domination of the legislature. With the revolt of Crystal City and the farmworkers' march, the genie was out of the bottle as far as political activism in the Hispanic world of Texas.

Franklin García's organizing successes in South Texas continued through the sixties and early seventies. One major breakthrough took place at Booth Fisheries in Brownsville, a plant that employed several hundred workers, largely women, in shrimp processing.

We had good friends in the Valley whom we saw every year during vacations. The husband owned shrimp boats. When he realized I represented Franklin and the Meatcutters Union, he never spoke to me again. Representing unions in Texas was a pretty effective way of culling your Christmas card list.

Securing a union contract at Booth took months of hard bargaining. Several days after the contract was signed, I went to Brownsville on another matter for the union, and Frank met me at the airport late at night. The first thing he told me was that the men at the Booth plant had gone out on strike that night. I was horrified. "They can't go on strike," I exclaimed, "you just got a contract. They will all be fired." I ran through the customary lawyer's litany. Frank explained that the company might not learn of that night's walkout because all the male shift supervisors had left also, and there was no one around to report the incident to management the next morning. I asked, "What provoked the walkout?" Frank explained it was the white pants. "What white pants?" The new contract provided that the company would furnish uniforms. Frank continued, "They arrived today, and they are white." "So what?" I reasonably asked. Frank said that the pants were thin, and the men thought their asses showed through in front of all the women workers, and they weren't going to wear them, so they struck. I suggested that the answer might be for the men to wear whatever they wanted to, and, in the meantime, they should go back to

work. Frank doubted that would solve the matter but agreed to that temporary solution. I needed sleep, and we planned to address the issue the next day.

The next day, after our brief NLRB hearing, Frank and I went to meet with the disgruntled graveyard-shift males. In a tiny airless room, we sat and listened to angry cries of *"pantalones blancos"* None of the workers spoke in English, and I understood almost nothing. Frank harangued and coaxed, with occasional gestures toward me as the "*abogado de* Dallas." Finally, after much muttering, the meeting broke up. Frank explained that my suggestion had been accepted. The men would go to work, wearing whatever pants they chose, and just not wear the white pants. Frank was so elated with the results of the meeting, he suggested we repair across the border to Matamoros and drink some tequila, which we did for far too long.

It was well past my bedtime when we recrossed the Rio Grande. I pointed out to Frank that he had bypassed my motel; he explained that we must now go to the meeting of the night-shift workers coming off duty and repeat our proposed solution. I have no idea how effective my presence was, as I sat nodding off in the corner. I assume the natives assumed I was just one more *gringo borracho* who had been overserved in Mexico. I heard nothing further of the matter for many months and then ran into a friend on the SMU law faculty who did occasional labor arbitration. He asked if I knew Frank García. I said, "Sure, why?" He explained that he had just heard the strangest arbitration case of his career; it concerned white pants and whether the workers would have to wear them. I asked how he ruled. His decision had provided, sensibly enough, that they did not have to wear the white pants. Labor disputes are often about dignity, but it is not always easy to recognize the indignity in advance.

Frank García and George Lambert are long gone, fallout, I suppose, of too much hard traveling and long nights in lousy motels in forlorn places. Grady McBryde crashed an ultralight plane a couple of years back, victim of his endless optimism. Gordon Hodgkins is now a retired Teamster who lamented during his later working years that the current union leadership had none of the courage of Jimmy Hoffa.

One day in the sixties I was riding with George Terrell, the business agent of the Dallas Ironworkers Local Union, an outsized man with a comparable sense of humor. We were checking out a construction project where it had been reported that some union ironworkers were working behind an Electricians Union picket. As we cruised by, George spotted an ironworker on the site and said: "Ah, I'd know that ratty bastard anywhere. I marked him for life when I bit his ear off in a fight a couple of years back." Satisfied that there were no union ironworkers on the job, we made our way back to the union hall without renewing hostilities. I know this aspect of my chosen calling was not what my mother envisioned when she shipped me off for a Phillips Academy Andover education, but somehow it suited me perfectly. I got to be a rebel in a suit and tie, for, believe me, representing unions in Texas in those times was one step removed from being a Bolshevik revolutionary.

I know that my activities caused a certain amount of parental grief, as witnessed by a report from my mother that my father had come home from the country club threatening to kill some fellow golfer who had called me a communist. They were later mollified somewhat when I took them to a couple of my Supreme Court arguments and they could be satisfied that at least I was accomplished at what I did. The reality is that, in the current vernacular, I had a blast living out the dream of causing consternation to one's enemies.

For twenty-five years my law practice consisted of representing unions and workers in disputes with employers all across Texas. By talking about only a handful of acquaintances, I don't mean to diminish those not mentioned. I worked with and for hundreds of union officers, organizers, and working people over those years. Our goals were frequently frustrated by hostile employers, able management lawyers, and unworkable laws that were designed to stifle union success. Nevertheless, the exposure to workers and their sophistication was a constant source of encouragement to me about the decency of our society. As I became distressed about my inability to protect workers from discharge for union activity, I was frequently comforted by the worker philosophy: "I had a shitty job before I had this one, and I can always get another." We are not a nation of loafers, but a nation of workers. For better or worse, a person's job, be it banker or truck driver, plays a core role in one's self-respect. Unions are more about worker self-respect than they are about dollars and cents. Sophisticated employers have come to realize this, and it may explain the difficulties unions now encounter in many of their organizing drives. The Ford thugs are a thing of the past, and good riddance. More sophisticated anti-union tactics are the rule today. That sophistication, coupled with automation, NAFTA (North American Free Trade Agreement), and foreign imports, may well doom many of our traditional unions.

7
Dallas, 1966:
The Federal Courts and the Winds of Change

IN RETROSPECT, 1966 probably signaled the end of a political era, one in which conservative Democrats had maintained total control of Texas government. Granted, the liberal Democrat Ralph Yarborough was then serving in the U.S. Senate, but his initial victory in 1957 was the result of a plurality victory in a special election to replace Senator Price Daniel. The reality at home was still Tory Democrats holding sway, most notably in their total control of the Texas legislature. The Republican John Tower was reelected to the U.S. Senate in 1966, putting to rest the illusion that his 1961 special election win had been a fluke. On the other hand, John Connally and the rest of the statewide Democrats overwhelmed their Republican opposition in the November elections. Nonetheless, change was afoot, and the catalyst for the change was, and continued to be for the next decade, the federal courts.

Texas election laws had been designed to ensure that control of the state government remained in the hands of white conservative Democrats. The statutory schemes discouraged voter registration and voter turnout and tilted heavily in favor of rural areas. Big changes came in 1966—all products of federal court action. The first victory was a federal court ruling—authored by the former Austin congressman and LBJ protégé Homer Thornberry—holding the Texas poll tax unconstitutional as an impediment to minority voting. Connally and his conservative legislative allies managed to replace the poll tax with an almost equally onerous annual voter registration, a system later also held to be unconstitutional by federal judges. Nonetheless, the elimination was a breakthrough, for those of us who had tried to sell $1.75 poll taxes to poor Blacks knew full well the barrier posed by the annual poll tax as a condition for voting.

The next series of important rulings came out of a case styled in the name of our old rope-swinging buddy Bill Kilgarlin, *Kilgarlin* v. *Martin*, and filed by Tony Korioth, a liberal ex-member of the Texas legislature. The court voided provisions that prevented any county from having more than one member of the Texas senate, and also required that senate apportionment be based on population rather than on the Texas constitutional standard of "qualified electors." Finally, the court nullified a provision that prevented any county from having more than seven members of the Texas house of representatives. These rulings, issued under the logic of one person, one vote, had dramatic consequences.

As a result of the old election laws, minorities, particularly Blacks, were significantly underrepresented among the state's qualified voters. The reasons were many. Until the late 1940s, Blacks were forbidden by state law to vote in the Democratic primaries, the only elections in town. Even when that barrier was stricken by the U.S. Supreme Court, there were still plenty of impediments to minority voting, most notably the poll tax, which, coupled with historic exclusion, meant that the state's "qualified electors," to wit: voters, were

disproportionately white. Moreover, any apportionment plan based on "qualified electors" heavily favored affluent white areas. Thus, requiring that apportionment be based on population helped eliminate that historical bias.

The 1960 census reflected a Texas population of just under 10 million. Approximately one-fourth of that population was in two counties, Harris (containing the city of Houston) and Dallas, yet those counties were limited to only one member each of the thirty-one-member Texas senate. Similarly, the populous Bexar County (containing the city of San Antonio) had been limited to one senator. Of course, a large portion of the state's minority population was located in those urban counties. The court orders required redistricting of the senate in 1965, with the immediate result that Harris County got four senate seats, Dallas three seats, and San Antonio an additional seat—all to be elected from individual districts within the county. Suddenly, nine senate seats in the thirty-one-member body were allocated to these big cities. Also, with apportionment now being based on population rather than eligible voters, the entire new state senate was more tilted to areas of Hispanic concentration, where registration was low but population high.

Thus it happened that in 1966, in Harris County, Barbara Jordan became the first Black elected to the Texas senate in the twentieth century. Barbara had been defeated in two previous countywide Democratic primary races for the Texas house of representatives; the white majority of the county was just not ready to elect a Black to office. In 1966, as a result of redistricting, the senate seat that produced a Jordan victory consisted of only one-fourth of the county, and she always attributed her 1966 victory to a senate district that was less than countywide. That same year two Blacks, one each from Dallas and Houston, were elected to the expanded house. Thus 1966 saw the first Black citizens to hold any legislative office of any kind in Texas in modern times. In stark terms, two-thirds of the twentieth century elapsed before any African American was nominated by either the Democratic or Republican Party for any office of any kind in the state of Texas.

In Dallas, my law partner Oscar Mauzy, the "liberal bomb thrower," was elected to the senate. Similar victories by progressive Democrats occurred across the state: Joe Bernal from San Antonio, Joe Christie from El Paso, Chet Brooks from Houston, and Charlie Wilson from East Texas were among other new faces. The entire complexion of the Texas senate changed overnight. The redistricting plans that produced these wins were drawn by the old conservative Democrats who had not yet achieved great artistry in drawing up creative reapportionment plans. Our old mossback senator from Dallas, George Parkhouse, greedily pushed into his district all of the most conservative voting precincts of north Dallas, not realizing that the two remaining districts could be dominated by progressive Democrats. Two years later, Dallas elected to the Texas senate, from the other new seat, longtime liberal activist Mike McKool. By the end of the decade, two of the three senate seats from Dallas, the state's most conservative bastion, were held by outspoken liberal Democrats. This shock to the old guard was purely a result of court-ordered changes in the electoral system, changes that had too long been forestalled by a lobby-dominated legislature.

Oscar's election was a testament to effective organization and rank-and-file enthusiasm. It was also viewed as an absolute disaster by the Dallas political establishment. Oscar embodied everything they deplored; he was pro-union, pro-integration, uncouth, and didn't give a shit what they thought of him. In

fact, Oscar could be a difficult person even for his friends and law partners, but he was the ultimate political animal. Oscar won the Democratic primary, and thus the election, in a runoff against the establishment candidate, David Ivy. Runoffs have notoriously low turnouts, and this district was problematic because it had large concentrations of Black and lower-income voters, traditionally more difficult to lure to the polls.

Oscar's election-day plan was drawn from big-city organization ideas. He created walk lists for all potential Mauzy voters, notably every registered Black voter, as well as any other identifiable Mauzy voter—essentially union members and Hispanics. On election day, we were to arrive at 7:00 A.M. at a restaurant in Oak Cliff to receive our day's assignment. To be successful, the program required an enormous number of volunteers. I remember being most skeptical as I drove across town that election morning (Texas liberals tend to get that way). I topped a slight rise just before the restaurant, and saw before me an ocean of people and automobiles. It seemed as if every union officer, Teamster driver, and liberal activist that I had ever known had turned out that day. In addition, Oscar had recruited young Black students from Bishop College, located in south Oak Cliff. Our assignments were simple: we were handed a list of voters broken down by street and house number. Our goal was straightforward: to produce at the polls every person on the list.

As I recall, we began knocking on doors at 9:00 A.M., encountering many disgruntled faces when we told them we were there to take them to vote and if they weren't ready at the time, we would be back. The response was mostly enthusiastic in the Black neighborhoods that I worked, enhanced perhaps by a mysterious handbill that had appeared overnight in Black areas of Oak Cliff. The handbill, ostensibly distributed by the Knights of the Ku Klux Klan, urged support for Oscar's opponent because Oscar was a "Nigger Lover." If, indeed, this was a Klan project, the organization certainly chose a hostile neighborhood for their efforts. Rumors persisted that the handbill was an effort by devious Mauzy supporters.

Oscar's opponent, David Ivy, had ammunition of his own. Governor Connally, never one to sit on the sidelines, had produced a taped telephone message urging support for his good friend David Ivy. Then-new technology enabled the message to be automatically dialed into the home of every voter in the district—a very powerful tool, given the governor's enormous political strength. Street talk circulated that union members at Southwestern Bell had gummed up the transmission, but no one ever stepped forward to claim credit. Oscar won a narrow victory with overwhelming support from the Black precincts. That night's victory celebration was, I think, the most joyous I ever saw, for it was truly a victory by those who had felt themselves utterly excluded from the political processes of Dallas. There was predictable, and even understandable, bitching about Mauzy dirty tricks after the election. But winners are winners in our political system, and elections do not get set aside because of campaign tactics. If they did, we would never close an election out. Oscar moved on to an illustrious and lengthy career in the Texas senate, and to his everlasting credit, he never forgot that it was the disenfranchised who put him in office: Blacks, Mexican Americans, and working people.

I initially thought Oscar's election would somehow make the Dallas law practice more tolerable; actually, it made things worse. Although Oscar had been certain that he could continue to carry part of a workload, realistically, he could not. Even more difficult was that every time a Mauzy supporter got

popped for DWI—a relatively common occurrence—or was involved in some nasty domestic dispute, we were supposed to lend a hand.

Discouraged again with the law practice, I made one last run at Washington, D.C., resulting in another ignominious withdrawal. Ralph Yarborough had become chairman of the Senate Labor Committee after the defeat of Senator Wayne Morse, the maverick from Oregon. There was an opening as chief counsel to the Senate Labor Committee, and it seemed an ideal slot. This was a field that I knew well, and with Johnson in the White House, and large Democratic majorities, it seemed possible that much-needed labor-reform legislation could be in the offing. The thought of being part of that kind of change was exhilarating. After a little bit of lobbying, Senator Yarborough offered, and I accepted, the post of chief counsel to the committee. This seemed like a perfect opportunity to return to the excitement of D.C. in a job that would give me a little clout. Ann and I sailed off for D.C. to househunt and make arrangements for the move.

Our first evening we had a fun, somewhat bibulous dinner with Harry McPherson and his wife, Clay. Harry by this time was in the White House, as chief counsel to the president, I believe. The next day, I went to be sworn in and have my welcome-aboard meeting with Senator Yarborough. Everything went smoothly until I sat down with the senator and mentioned that I had dined with Harry the previous evening. Yarborough went bonkers. He began an interminable harangue about the despicable people in the White House, claiming that Johnson was determined to destroy him. He made it clear that no one on his staff could consort with any Johnson people. All of this struck me as a little overdone, especially as it was fairly common knowledge that President Johnson had bludgeoned prominent conservative Democrats out of opposing Yarborough's 1964 successful reelection effort. In any event, it was evident that no goodwill had survived that episode. After the senator's lengthy tirade, we got back on a somewhat even keel, but I left him knowing full well that I was not cut out to be a political staffer. Elected officials berating staff is all part of the deal, I suppose, but I knew myself well enough to know that I would not put up with such tantrums. That night, Ann and I agreed that, as bad as Dallas was, we did not need to tackle the Washington scene. I called the senator the next morning and offered some lame explanation about deciding to stay with my "challenging" law practice. He graciously made the literary allusion to the road not taken—inwardly, I thought the more appropriate reference was *Through the Looking Glass*—and thus ended my twenty-four hours of employment in D.C.

In retrospect, it is hard for me to accurately assess the entire Johnson/Yarborough conflict. We now know that the major goal of John Kennedy's 1963 Texas trip was peacemaking between the Yarborough liberals and the Johnson/Connally crowd. Michael Beschloss's book on the Johnson tapes, *Taking Charge*, contains some revealing exchanges on the subject, one between then President Johnson and Frank Erwin, Connally's major arm twister. In February of 1964, Johnson is complaining about Connally conniving with Allan Shivers to come up with a Democratic primary opponent for Yarborough's reelection bid: "If I could get along with the Senator from Texas, it looks like you-all could. And he's insulted me more than anybody. . . . I don't have John's confidence . . . He goes off with Shivers and plans these things. And Shivers has been an anti-Johnson man that got defeated at my hands. . . . John has a pretty good image here with the Negroes and the Mexicans and with

being a pretty moderate fellow. And now, by God, he starts meeting with the Citizen's Council." Erwin at some point suggests that Connally feels that Johnson has "turned his back on his friends and gone off with Ralph Yarborough." In an allusion to the fateful Kennedy visit to Texas, Johnson remarks, "Hell, John and Nellie wouldn't ride in the same car with him. So I guess he got mad too. . . . I laughed . . . I thought it was little boy stuff . . . when the nut cutting was done, why we got in the car and bowed nice. I didn't think it hurt me a damned bit to ride with Yarborough" (pp. 206–207). Politicians are mighty prideful people, and my encounter with Yarborough over the Johnson White House was one more reminder that we mortals are not destined to understand the politician's ego.

After my Yarborough debacle, 1967 was looking pretty bleak, until I was rescued by the appearance of the tuba player Ev Gilmore. Members of my firm had been instrumental in forming an ACLU chapter in Dallas and in creating the statewide Texas Civil Liberties Union. For some reason, I had not been involved, thus Ev became my first major civil liberties case. He played in the Dallas Symphony and taught the tuba at Dallas Community College. He had one pupil, whom he taught one hour per week for the grand salary of $10.00 per week. Shortly after beginning his tuba teaching, Ev was confronted by the demand that he sign the state's nonsubversive oath. The oath, prescribed by state law, required people to swear that they were not a member of the Communist Party or any other organization designated by the U.S. attorney general as "subversive." Ev refused to sign the oath and was promptly fired, and he found his way to us through the ACLU. Ev was delightful, easygoing, and had no particular ax to grind. He simply thought the oath violated his constitutional rights—for what he thought was no one's business but his own. It was a joy to have a challenging cause that diverged from the humdrum of everyday law practice.

These oaths were fairly commonplace across the United States and were products of the McCarthyism "red scare" of the late 1940s and early 1950s. This particular oath requirement had its origins in an Executive Order issued by President Truman in 1947. Under the authority of that order, the attorney general of the United States published a list of some eighty organizations deemed to be subversive. Although the principal target was the Communist Party, a variety of other left-wing groups got caught in the net, including, among others, the National Lawyers Guild and the Veterans of the Abraham Lincoln Brigade. Many states, like Texas, jumped on the bandwagon, denying public employment, public housing, and other benefits to members of the listed organizations. Texas statutes prohibited public employment and attendance at state-supported institutions of higher learning for members of the listed organizations.

Texas still rigidly enforced the requirement, and the Texas oath had never been challenged. In fact, as best I could discover, there had been negligible constitutional litigation in the Texas federal courts for many years, aside from the desegregation cases, most of which had been derailed by hostile federal trial judges. It seems so strange now, given our recent history of an activist federal judiciary, that as late as 1967 there was no track record in Texas of law-reform lawsuits. Upon reflection, the reasons are all obvious: the sitting federal trial bench, until recently, had been the product of an extremely conservative era. When I first started law practice in Dallas, plaintiff lawyers avoided the federal courts like the plague, and most considered the federal courts a stodgy

backwater. One of the sitting judges in Dallas had been appointed by Warren Harding, or at least seemed to be from that era. The other, T. Whitfield Davidson, a staunch defender of states' rights, had attempted to prevent the state Democratic executive committee from certifying Lyndon Johnson as the U.S. Senate nominee in 1948. As we know, Johnson's political fortune was salvaged when Justice Black of the Supreme Court overturned Davidson's order.

By the mid-1960s, the complexion of the federal judiciary had changed dramatically, and the Gilmore case served to highlight those changes, although the case itself was fairly straightforward. I had some federal court experience in labor areas, but nothing that prepared me for the procedural complexities of the Gilmore case. Someone alerted me to the Three-Judge Court Act, a federal law that required the convening of three federal judges if the plaintiff sought to enjoin the enforcement of a state statute on the grounds of unconstitutionality. I thought, "What the hell," I might as well try to take out the entire law while I was at it. The suit was filed and assigned to Sarah Hughes, before whom I had previously appeared and with whom I felt some degree of comfort. The two other judges appointed to complete the court were Mac Taylor of the district bench and Irving Goldberg of the Fifth Circuit Court of Appeals, both Dallasites. I knew little about them except that they had recently been appointed and had been the focus of one more major Johnson/Yarborough patronage struggle, which had left the seats vacant for months. Taylor had been the senator's choice for the district vacancy in Dallas, and Goldberg the president's choice. Gossip had it that the final compromise was to give Yarborough the district court slot and to nominate Goldberg for the appellate seat.

However they came about, the choices were felicitous; both were men of great humanity and served with distinction for many years. What I did not know at the time was that this court was probably the most progressive court ever convened in Texas, if not the entire United States. There was probably no way I could lose the case if I remembered to show up at trial time. In fact, these same three judges, Hughes, Taylor, and Goldberg, later constituted the trial panel in *Roe v. Wade*, finding the Texas abortion statute unconstitutional, in one of the more dramatic trial court decisions of our time.

The federal judiciary of the South, particularly the Fifth Circuit Court of Appeals, is the stuff of legend. These federal courts presided over the transformation of the Old South, the dismantling of a segregated education system, the enforcement of voting rights of disenfranchised minority voters, and the implementation of equal-employment legislation. Throughout the 1960s and 1970s, new issues were constantly being raised, and the federal courts played a decidedly critical role in their resolution and in the fostering of civil rights and civil liberties.

In Texas, the changes at the federal trial level were simply revolutionary. Political wisdom has it that Johnson, as majority leader during the Eisenhower era, blocked the creation of new federal judges in Texas and perhaps elsewhere. With Kennedy's election, vacancies in the federal courts in Texas began to be filled, and legislation created new federal court positions, setting the stage for the patronage struggles that occupied much of the mid-1960s. One of the stories to emerge concerned a meeting between Johnson and Yarborough in which they were to attempt to resolve their differences. Each brought folders containing data on their judicial choices. They exchanged folders and began to

wade through the names, rapidly discarding the other's recommendations. Yarborough had recommended "Tiger" Jim Sewell, a longtime liberal state district judge from Corsicana, for the federal bench. When Johnson rejected Sewell, Yarborough demanded to know the reason. Johnson replied that he lacked a judicial temperament. Yarborough took exception, and Johnson was forced to remind him that Sewell had tried to bite George Reedy's ear off in a barroom brawl, when Reedy was Johnson's press secretary. Sewell had been blinded in World War II, but this never interfered with his pugnacious nature. It turned out that Reedy and Sewell had been sitting side by side on adjoining bar stools engaged in a political argument. Reedy called Sewell a Commie, and that did it. Sewell grabbed Reedy, wrestled him to the floor, and was in the process of detaching his ear when the fight was broken up. By mutual agreement, Sewell was passed over for appointment to the federal bench, and they moved on.

When the dust from the patronage battles settled, a courageous federal trial judiciary was in place in Texas, a group that ushered in the new era—Reynaldo Garza from Brownsville; Adrian Spears and D. W. Suttle from San Antonio; Jack Roberts and Homer Thornberry from Austin; John Singleton and Woodrow Seals from Houston; Sarah Hughes, Mac Taylor, and Halbert Woodward from North Texas; and the most famous of the bunch, Wayne Justice from East Texas. The point to be made is that each of these judges contributed mightily to the civilizing of the state in difficult times. Certainly the Fifth Circuit decisions of that era are masterful, but it was these trial judges who had to face the anger and frustration of the home folks who resisted the changing order. To my mind, there were only two clunkers appointed in that era, Ernest Guinn of El Paso and James Noel of Galveston, and credit for both of them can probably be put on Yarborough's doorstep. Despite Texas liberals' suspicions of Johnson, in fact, his federal judicial choices were uniformly superior, and they do great credit to his memory.

Suits against governmental bodies, particularly state entities, have many pitfalls. Questions of who can be sued, where they can be sued, and who can sue them always emerge, and the Gilmore case was no exception. This case taught me to scramble when things begin to go awry. Shortly after suit was filed, Dallas Community College filed a pleading stating that the school had been mistaken in requiring the oath of Gilmore because, in their newly adopted view, the state statute did not apply to the local college. The school tendered to the court Ev's full $150 salary for the semester and urged that my lawsuit be dismissed as moot. Obviously, I needed new plaintiffs if my case was going to stay alive. My old law partner George Schatzki was now on the UT law faculty, and he found new plaintiffs: UT law student Cam Cunningham and some faculty members. At that time, all state institutions of higher education, including UT, required all employees and students to execute the oath. Indeed, UT registration was a nightmarish process, for every semester students had to wade through a bank of notary publics to execute their antisubversive oath as part of the registration ordeal.

Just as my case seemed to be shaping up, new complications emerged. The state attorney general suddenly decided that UT had been wrongly requiring students to execute the oath and that the statute requiring student oaths had been repealed years earlier. The court was advised that the student oath was a thing of the past, and again dismissal was urged on the mootness grounds. We seemed to be winning, but our standing to challenge the constitutionality of the

oath was dissolving.

Miraculously, a new plaintiff emerged who was almost too good to be true. Tom Mantle, a young student, had been hired by the UT Law Library to reshelve books. When confronted with the oath, he said he could not sign because he was a member of one of the listed subversive organizations—the IWW (Industrial Workers of the World), or the Wobblies. Mantle was promptly fired from his new job. The Wobblies, long dormant as a labor organization, maintained a chapter in Washington State. Members of the emerging new left, such as Tom Mantle, joined out of conviction or sentiment during the 1960s. With Mantle as a plaintiff, all of the standing problems vanished. There was little doubt that I should win, partly because similar oaths were beginning to be struck down all across the country and there was no justification for such idiotic relics of the McCarthy era to remain on the books. I have always suspected that my buddy Roy Mersky, head of the UT Law Library, was responsible for Mantle's sudden appearance and the unassailable factual foundation of his claim. How fortuitous that the Law Library would have offered a menial job to a Wobbly and then have withdrawn the offer because of the oath requirement. I was beginning to learn about creativity in the formulation of a lawsuit.

The attorney general of Texas was, of course, determined to defend the oath to the bitter end. The deposition taken of Tom Mantle made me feel as if I were back in the days of Big Bill Haywood. The attorney general questioned:

Q. Now, you just said you were very interested in Socialism, . . . and believed in it politically, and I thought you said that in the context of why you became a member of the Industrial Workers of the World.

A. Yes.

Q. Well, are you telling me that they advocate Socialism?

A. Yes . . . their particular brand of Socialism.

Q. What is their particular brand of Socialism?

V. Labor syndicalism.

Q. What is labor syndicalism?

A. It is a particular belief that . . . I believe that basically it is that all of the working people in the world, if they were to unite in one union, then this union would be the—become the dominant—I would say, dominant force in society.

Q. In other words, it could overthrow all other governments, supplant all existing government authority? Just say "Yes" or "No."

A. Yes.

Q. Does this organization believe in it? You have just said you believed in this—what was it? What was the term—"syndicalism"?

A. Yes.

attorney then proceeded to establish Mantle's degree of participation in IWW activities:

A. Am I? Are you asking whether I am an active participating member? Yes, I am.

Q. Well, by participating I mean active in concert with the members of the Industrial Workers of the World to further the goals, aims, and purposes of the Industrial Workers of the World. Is that difficult?

A. Yes.

Q. Well, either you do it or you don't.

A. Well, first of all, I mean, would it be all right if I tried to clarify things here? This organization hasn't been very active.

Q. I don't care how active they are. Just when they are active, when they do something, do you participate with them?

A. Yes, when they are active, I do participate.

When the case was heard before the three-judge court, the office of the attorney general dutifully offered this deposition testimony, presumably to show the risk to the state if this labor syndicalist were allowed to shelve books at the UT Law Library. All of us, the court included, sat with straight faces as we were assailed with the risks to the state's safety posed by the rebirth of the radical Wobblies right there in Texas. The case, for whatever reason, was treated so seriously that the attorney general himself, Crawford Martin, sat in at trial. The trial court promptly declared the oath unconstitutional and enjoined its further use as a condition of public employment in Texas. The court's reasoning was completely understandable. Even if you grant the state the right to deny state employment to persons who advocate the destruction of the state by force and violence, that still does not justify denying employment merely on the basis of organizational membership. We join organizations for a variety of reasons in this country, and we may or may not subscribe to all of the tenets of the group. The state may not, as a constitutional matter, broadly assume that all members share the same goals, for to do so abridges our First Amendment rights of freedom of association.

The oath cases such as Ev Gilmore's were a major break from the past, and they mark the beginning of judicial assault on "guilt by association," which had been the hallmark of the red-scare era of McCarthyism. In those years, appeals from a three-judge court injunction went directly to the U.S. Supreme Court. Given the mindset of Texas in that era, the Texas attorney general appealed. In 1968 the Supreme Court affirmed in *Gilmore v. James* and put an end to the silly oath and at least that phase of the red scare in Texas. Suing the state had been the most enjoyable experience of my law practice, and for the next twenty years or so, most of my energies were happily spent in pursuing the state of Texas and its political subdivisions in a variety of constitutional challenges.

Ev and I remain friends to this day, and he periodically puts in an appearance at random gatherings and gives us a tuba solo or two. He gave up his promising teaching career at Dallas Community College without noticeable distress.

8
The Radical Left Shows Up in Texas

THE LATE 1960s were a time of national ferment, and our household was no exception. In 1968, Ann and I finally determined to get out of Dallas come what may. That was also the year of Stoney Burns and the *Dallas Notes* and the Wimberley Radical/Lawyer Conference. Perhaps of equal importance, it was about this time that we discovered the joys of river running. All of these events made 1968 a watershed year.

One of the true phenomena of the sixties was the meteoric rise of underground newspapers, fueled by anti-authoritarian, antiwar, dope-smoking young people. Beginning on the West Coast, they suddenly sprang up everywhere, and Dallas, surprisingly, was no exception. The *Dallas Notes* had its beginning on the SMU campus as, I believe, *Notes from the Underground*. The creator of the paper was kicked out of school, and the paper shortly resurfaced as the *Dallas Notes*, produced by Brent Stein, a.k.a. Stoney Burns. The paper was, of course, a total affront to Dallas and its notions of respectability, extolling sexuality, drugs, and irreverence. It was fairly evident that the city would not long tolerate this embarrassment to good order.

My involvement with the *Notes* and Stoney came as a result of two raids by the police on Stoney's house, where he produced the paper. The house—what was then typically called a hippie crash pad—was located on Live Oak Street in east Dallas. The first raid was under the guise of a search warrant for obscene material. The trigger for the warrant was ostensibly an issue of the *Notes* that had an article on the making of porn movies in Dallas. The cover of the paper had a publicity still from the film, which I frankly think was my old friend Moe Levy's *She Mob*. As mentioned above, Ann and I had attended the first screening of the film at a cast party, in just one more of life's ironies. In all events, the Dallas police thought the cover, albeit involving no nudity, provided ample grounds on which to try to shut the paper down. Typical of the era, the raid was conducted at 10:00 P.M. The police always figured that by raiding at that hour, if nothing else, they might catch someone smoking a little pot and be able to make a felony bust. No such luck. The officers hit the front and back doors simultaneously, but only found Stoney and three others sitting on the sofa "talking." The head of the vice squad testified as to Stoney's reaction to being presented with the search warrant:

> A. Well, he said something about obscene materials. He got out a little red book he had in his pocket or on the mantle or from somewhere, and said, "Let's see what Mao says about this," and he started to read some passages out of it.

As I write this some thirty years after the event, it seems unbelievable that there was such a time. In all events, the chairman did not provide sufficient guidance to prevent a wholesale ransacking of the house.

The deposition of the leader of the raid provided the most successful, if unintended, cross-examination of my career:

> Q. What instructions did you give the officers in effecting this search and seizure as to what they were to do?

A. They were to search for any obscene material they could find. All of our officers know what obscene material is.

Q. What is obscene material?

A. Well, I wish you hadn't asked that. I take that back. They don't know, neither do I.

In preparation for the raid, the police as a precaution took two trucks to transport the expected contraband. The officers seized two tons of newspapers, cameras, desks, and a variety of personal items—all because they claimed these were implements of the crime of obscenity. Of course, it probably occurred to them that this would be an effective way to shut down the paper. The police, as was typical, arrested everyone on the premises because they were in the presence of obscenity. Remarkably, Stoney managed to scavenge together enough equipment after his release from jail to get his next issue out. This issue editorialized about the raid:

> No one could seriously believe that NOTES is pornographic. . . . According to Supreme Court rulings, pornography must have "no redeeming social merit" and must appeal to prurient interests. None of the fifteen pigs involved in the raid, or the eight jail trustees carrying out newspapers, had a visible erection. It may be possible, however, to visit the men's rooms of City Hall and find a pig holding a copy of NOTES in his left hand and jacking off with his right.

Once this issue hit the streets, the Dallas police were back instantly, this time with a warrant to search for marijuana, based on information from an anonymous informant. Of course, no drugs were found; there was probably no informant; and in all likelihood the police simply lied in order to get the court to issue a search warrant, not at all uncommon in those times. The police happily cleaned the place out again. The next issue of the paper explained that

> the only furniture remaining in the NOTES office now is a desk, one table, a bookcase, two chairs and an empty filing cabinet. All other desks, lamps, typewriters, tables, correspondence, bookkeeping records, subscription lists, typesetting equipment, etc., remains in the custody of the pig department, which has repeatedly ignored requests for the return of this equipment. . . . The pigs did everything but sow the flower beds with salt, this time.

Shortly afterward, Stoney went to the ACLU and then, through them, came to me. I immediately filed suit against the Dallas police chief and other members of the force. Our initial goal was to try to stop further harassment and to reclaim the property. The case was assigned to Federal Judge Sarah T. Hughes, and the city's attitude immediately became cooperative. At our first hearing, the city attorney agreed to return all the seized goods and to stop the raids. Stoney and I had a splendid afternoon sitting on the steps of his house watching the Dallas police lug back all of Stoney's stuff. The police were not happy, but for the moment, the paper was functioning again and there were no more police raids. On the other hand, an affidavit given by Stoney some weeks later suggested the war was far from over:

> That on March 17, 1969, at about 6:30 A.M., E___ K____, a uniformed policeman, appeared at my residence at 3117 Live Oak St. in Dallas. He was there to answer a complaint I had called in about ten or fifteen minutes previously. He rang the front doorbell and I answered it. His first words were "What do *YOU* want?" [emphasis his]. I explained that my automobile had been vandalized. He just stood there. "Do you want to see it?" I asked. He agreed to look at the car. As we approached the car he asked, "Nobody likes you, do they?" I said, "Some people do." He asked, "Who doesn't like you?"
>
> By this time I was quite perturbed by his attitude, and answered, "The only people who don't like me are cops," a statement which is quite true to the best of my knowledge.

"I didn't say I didn't like you," he immediately retorted in a defensive way.

"I didn't say you did," I explained, shocked at his manner. "I said the only people who don't like me are on the police force. I didn't say *all cops* dislike me."

"Get in the car," he ordered, pointing toward his squad car. I got into his car. He asked my name and telephone number. I gave him this information.

"Why don't the cops like you?" he questioned then.

"Because I publish a newspaper," I answered.

"You don't publish the *Notes*, do you?" he asked. I nodded my head. "I don't like you either, you son of a bitch. Get out of my fucking car," he yelled. I asked for his name, but he refused to tell me. I memorized the badge number on his hat and got out of his car. Then I memorized the number on the car. I went inside and called the police department to make a complaint. I talked to Captain Finney, I believe, and gave him the information. Upon my request, he sent two other officers out to my residence to investigate the vandalism incident.

The next morning, Tuesday, March 18, at approximately 2:30 A.M., my automobile was stopped by Officer K____ about four blocks from my house on Live Oak Street as I was taking a friend home. He motioned me to get into his car. I did. He proceeded to tell me that he knew about the complaint I had made against him and that he was going to "get even." He said if he found any excuse, whatsoever, that ". . . I'll put you in the morgue." He said that even if he had to take off his badge and come over to my house he would "get" me. He said he knew my father and wondered how I turned out so rotten. He made several more threats and let me go. He wouldn't let me speak, except for yes and no. The total time I spent in his car was approximately 20 minutes.

§ Brent Stein

Subscribed and sworn to before me this 9th day of April A.D. 1969.

As we used to say in those years, it is difficult to change the hearts and minds of men through laws or lawsuits.

Stoney's lawsuit continued for some years as it took on an unexpected shift in focus. Once the case was under way, it seemed logical to attack not only the tactics of the Dallas police but also the state's obscenity statute, given that the statute had been the supposed justification for the wholesale seizures. At the time, I had no inkling where that tactical decision would lead. A three-judge court was convened that again included Judge Goldberg and Judge Hughes. In the summer of 1969, the court declared the Texas obscenity statute unconstitutional and banned its further enforcement. Notably, the court did not prevent the state from going forward with the two bogus obscenity criminal charges pending against Stoney, although it was apparent that the district attorney had no inclination to actively pursue the prosecution.

The state's appeal to the U.S. Supreme Court followed. The trial court opinion on the obscenity statute was unassailable, but we had fallen into the midst of a raging constitutional debate of the era. Under what circumstances, if ever, could a federal court intrude itself into a pending state court criminal prosecution? In effect, our federal court decision had interfered with the state's ability to go forward on the obscenity charges that had been filed against Stoney. It was argued that this interference was in direct conflict with our notions of a federal system and of state sovereignty being respected by the admittedly superior federal court system.

The stage had been set for this dispute by instances of police and prosecutorial abuse all across the country. The routine response in the sixties to political dissenters was to bust them and prosecute them. Whether it was Black Panthers, antiwar demonstrators, La Raza activists, or hippies publishing underground newspapers, the law enforcement reaction was the same everywhere: hammer their asses.

For example, in Dallas during this time, a Black activist, Ernie McMillan, led a demonstration against discrimination at a grocery store in a Black neighborhood in south Dallas. During the course of the demonstration, a watermelon was broken, perhaps by McMillan. He was charged and convicted of felony destruction of property, given a stiff penitentiary sentence, and ultimately served hard time. A potentially criminal act that should have been treated as a minor misdemeanor was enhanced by Dallas District Attorney Henry Wade to a major felony—all done under the guise of prosecutorial discretion, which in those years was routinely used to go after dissidents. In the same fashion, long-dormant criminal laws were resurrected to combat the rising dissent-vagrancy laws, obscenity prohibitions, and even criminal syndicalism. Understandably, civil rights lawyers thought their only recourse was to try to drag these local officials into federal courts, where the judges seemed largely free of the local political hysteria that animated the abuses by local law enforcement officials.

Our notions of justice are grounded on the assumption that one can obtain fairness in the state court criminal system, and if the state court process fails, one can always seek review in the U.S. Supreme Court. This lofty approach made no sense at all on the street, where dissenters were taking their lumps on a daily basis. The other mockery in the reasoning was the claim that abused citizens could always sue the police officers for damages in court, state or federal, for violation of their civil rights. It did not take much sophistication to conclude that a damage suit by the hippie Stoney Burns against the Dallas police before a Dallas jury was the height of frivolity.

Taking Stoney's case to federal court did not reflect any significant legal analysis on my part. It was the only hope of relieving the pressure and at least stopping some of the harassment. Slowing the police down did not necessarily depend on some favorable ruling from the court. The reality was that the Dallas police were paralyzed at the prospect of having to answer for their misdeeds before the Honorable Sarah T. Hughes—a daunting prospect for most of Dallas officialdom. Thus, the mere filing of suit provided much of the hoped-for relief. When the Supreme Court scheduled Stoney's case for argument, my only reaction was one of excitement at having a Supreme Court argument. By this time, Ann and I had moved to Austin, and I was scrambling around trying to make a living in new territory and did not have the luxury of contemplating the implications of the upcoming court review. As the time grew nearer, however, the gravity of the event began to sink in.

The thrust of the state's appeal had been the preservation of the obscenity statute, but it seemed to me that this was not an issue of much interest to the Court. When *Dyson v. Stein* was set for argument, it became apparent that the Court's interest was elsewhere. We were set for argument in a cluster of cases that presented the issue of federal court power to act in the face of pending state criminal prosecutions. Indeed, one of the cases to be argued was by my new law partner, Sam Houston Clinton. Sam's case, *Gunn v. Committee to End the War*, was typical of the era. His clients had gone to Killeen, Texas, to carry antiwar placards during a speech by President Johnson. They were set upon by members of the audience, including Fort Hood soldiers, arrested by military policemen, placed in the Bell County jail, and charged with disturbing the peace. Sam had filed suit to declare the disturbing-the-peace statute unconstitutional.

The cases were set for the opening week of the term, and the most notable thing to me was that here were the two of us, from a two-person firm, arguing back-to-back before the U.S. Supreme Court. The Court was not concerned with the obscenity statute, but instead focused its questions on the federalism issue. I was too nervous to remember much from the argument except how physically close the lectern was to the members of the Court. The typical courtroom separates the lawyer from the judges by many feet; in the Supreme Court you feel as if you are in the justices' laps. Many of the luminaries of the nation's civil rights bar were there to argue the companion cases from California, Chicago, and New York. As luck would have it, there was a vacancy on the Court—Justice Abe Fortas having been forced to resign because of his indiscretions—and the issues were sufficiently divisive that an eight-member court did not want to, or could not, resolve them. So at the end of the term, the Court ordered reargument for the next session, when the recently confirmed Justice Harry A. Blackmun would be sitting, after the Senate had rejected Nixon's first two choices, Clement Haynesworth and Harold Carswell, with Ralph Yarborough voting to reject both of them—two more feathers in his cap.

By the time of reargument, everyone on our side of the deal realized that we were in the soup. I was urged by more sophisticated lawyers to stress the facts, and this I did, in the hope that the outrageous behavior of the police would in turn outrage the court and perhaps save my case from the anticipated judicial bath. I duly stressed the wholesale seizures of Stoney's property and was even able to lure Justice Hugo Black into pondering out loud why the police would have seized a "brown sweater." But only Justice William O. Douglas was clearly my champion. Justice Black was distinctly hostile when I attempted to differentiate my case from the other cases that had obtained injunctions against state prosecutions. When I pointed out that we had not sought to enjoin pending prosecutions and had asked only for a declaration of unconstitutionality of the obscenity statute, Justice Black suggested peremptorily that my strategy was to obtain declaratory relief and then bootstrap into injunctive relief against the pending prosecutions, a strategy far beyond my limited horizons. I weathered the arguments with no distinction. My family came the second time, and the bailiff had to awaken my son Clark, who had gone to sleep during my presentation.

In due time, the Court, following Justice Black, decided all of the cases based on the premise that federal courts should not, except in the most dire circumstances, interfere with state criminal prosecutions, either by injunctive or declarative relief, and Stein became a footnote to the lead opinion in *Harris v. Younger*. Justice Douglas's dissent in Stein did preserve for history the depredations of the police, concluding "it would be difficult to find in our books a more lawless search-and-destroy raid." By the time the Supreme Court acted, the Texas legislature had repealed the obscenity statute, which had been one focus of the lawsuit, the criminal charges against Stoney had all been dismissed, and Stoney had resumed publishing his paper—without interference from the Dallas police. The Supreme Court sent us back to the trial court so that we could pursue a damage action against the Dallas police for their unconstitutional raids, but neither Stoney nor I had interest in such a fruitless undertaking. In the end, we reached a sort of "no interference" agreement with the city of Dallas, and the case was dismissed.

Although the suit did dwindle away, it also accomplished its purpose, as the *Notes* subsequently continued publication for so long as Stoney had the energy. However, the Dallas police never forgot. Some years after I had moved from Dallas, Stoney was stopped on an alleged traffic violation. A search of his car produced a marijuana roach; Stoney denied any knowledge of the dope, but that didn't stop a felony prosecution. Charged with a felony for possession of less than one-tenth of an ounce of seeds and stems, Stoney was convicted by a Dallas jury and given ten years and one day in the state penitentiary. The one day was added at the urging of District Attorney Wade's office, in order to prevent the possibility of probation, Texas law provided at the time that sentences of more than ten years foreclosed probation. Stoney ultimately served less than a month. He was saved from doing the full time only by legislative action, after the Texas legislature reduced possession of small amounts of marijuana to a misdemeanor. This battle for change was led in the Texas senate by none other than our recently elected Senators Oscar Mauzy and Mike McKool. Then Governor Dolph Briscoe, to his everlasting credit, issued essentially blanket pardons for those who had been convicted of felonies based on possession of small amounts of grass, and Stoney thus escaped the state pen by the skin of his teeth.

As a final Dallas chapter, I became involved in one of the more ambitious and, upon reflection, unlikely events of the era: what we came to call the Radical/Lawyer Conference in Wimberley, Texas. It was held in late 1968 at a dude ranch, which had hosted a Pi Phi sorority retreat the previous weekend. No two events could have been more divergent. The premise of the conference was to bring together "movement" people with the handful of Texas lawyers who were willing to represent them in their never ending legal travails. The hope seemed to be that out of this conference would emerge a meeting of the minds among the participants, so that future relations between client and lawyer could be more harmonious. I was inveigled into the deal by Fred Cohen of the University of Texas law faculty, sometimes known as "Fred the Red," and Martin Wiginton of Austin, an old acquaintance who had become a roving radical agitator.

My responsibility was to solicit lawyers who would be willing to put their names on the brochure announcing the conference. If they were not already in the FBI files, this act alone assured their presence in the record of potential subversives. Obviously, no big-law-firm types came forward, and the list was composed mainly of a youngish civil liberties crowd. I was able to obtain support from several serious lawyers: John Barnhart of Houston, Maury Maverick Jr. of San Antonio, and my partner-to-be, Sam Houston Clinton of Austin. The most notable was probably Warren Burnett of Odessa, one of the state's premier trial lawyers and assuredly its finest raconteur. The left produced from California Charles Garry, who had recently successfully defended Huey Newton, the Oakland Black Panther, and William Kunstler, who was beginning to become well known as a legal gadfly of the left. The most prominent of the national leftists in attendance was Bernadine Dohrn, who later became a leader of the Weathermen underground.

Attendance was in the hundreds. If there was a registration list, I assume the Department of Public Safety secured it, and, regrettably, I doubt anyone was clear-thinking enough to take photos. It was a gathering of the young disaffected of Texas: Black Panthers from Dallas and Houston, La Raza activists from San Antonio and points south, antiwar-movement leaders,

SDSers, run-of-the-mill hippies and yippies, and everything in between. Jim Simons of Austin described his recollections in Daryl Janes's compendium of the radical 1960s, *No Apologies*:

> Movement people laid a heavy rhetorical rap on the errantly bourgeois lawyers who in turn pontificated . . . and drank at an open whiskey bar before retreating to a lawyers-only meeting to see if they could make sense of what was being asked of them.

My memory is reasonably clear on some of these matters. After Kunstler and others harangued the lawyers for not shedding our middle-class trappings and joining the cause, the meeting seemed to rapidly deteriorate. The issues that divided us were many—age, lifestyle, preferred mood enhancers—but the critical dispute revolved around control of litigation. Many in the movement wished to make the courtroom an extension of guerrilla theater, confronting the system head-on to demonstrate its fascist/racist bias. The Texas lawyers present, having been schooled that the lawyer's trial role was to develop and pursue a winning strategy and that the strategy determinations should rest with the lawyer, were most reluctant to surrender to such notions. As the dispute threatened to sink the meeting at the outset, I proposed, and it was agreed, that the two groups meet separately to hammer out their respective positions and then reconvene.

As a lawyer, I felt our meeting was rather touching. One serious lawyer from Killeen, the great gentleman Davis Bragg, explained that he wanted to do everything he could to help, but he still had to go to the courthouse in Bell County on a regular basis for his other clients. He didn't figure he could survive if he began to attack the local judges as racist pigs. Kunstler, as the Pied Piper of the movement, argued that we needed to throw off such shackles and confront the establishment for the fascist operation we knew it to be. A fairly obvious cleavage developed between the lawyers who went to courthouses on a regular basis and those who did not. Finally, Burnett, who had been much in evidence at the open bar, declared he felt he had the sense of our group:

> We are lawyers who are prepared to represent movement causes when the time arises, and to do so in the manner we, as lawyers, feel the cause should best be presented in court, and if this approach is not satisfactory to the young radicals forgathered on this occasion, then, to borrow from the rhetoric of the movement, "fuck 'em."

This statement of principle passed handily, and I was commissioned to make this report to the full body. I dutifully did so, and thus ended any attempt to create dialogue. Simons concluded that "the conference was something of a wild melee. The organizers were left with a dude ranch in shambles and a deficit of $1,700, mostly for whiskey."

In trying to assess the import, if any, of the Wimberley gathering, I am most struck by the fact that it took place at all. In this day of rampant cynicism, it is worth recalling that thirty years ago there was a movement, subscribed to by thousands of intelligent people, that believed we were on the verge of real change in our society. Wimberley was but one piece of that era, and although it did not appreciably narrow the gulf between the new radicals and the old progressives, it surely confirmed that we were all alive and ready to challenge the old order. Attendance secured our places in the subversive files of the period and enriched our old age. In addition, some tangible results also emerged.

As a direct outgrowth, Cam Cunningham and Jim Simons formed a "movement law collective" in Austin. The firm functioned for many years and made enormous contributions in the field of human rights. Their efforts led others to participate as well. Ed Cloutman and Ed Polk began a similar operation in Dallas and drove the establishment bonkers for years. In Houston, Ed Mallet, Frances Freeman Jalet, Rick Prinz, Larry Sauer, and others started their own collective. Within fairly short order, Frances Jalet began the *Ruiz* litigation before Judge William Wayne Justice that became one of the nation's preeminent prison-reform lawsuits. So movement law firms did emerge in Texas that were more willing to identify with the new left than we old farts were. We all managed to happily collaborate with each other, for there was never any shortage of worthy causes that called upon our energies throughout the seventies.

In 1970, some of the participants formed the Radical Lawyers Caucus. They sought to publish an ad in the *Texas Bar Journal* to announce the formation of the group, but, of course, the state bar wasn't having any of it. The ad was refused and the group sued the Texas state bar for violation of the constitutional right of free speech, and good old Federal Judge Jack Roberts found for the radicals. We all ended up in San Antonio at an alternative bar convention. The state bar had the felon John Mitchell, Nixon's attorney general, as its speaker. The radicals had William Kunstler. I went down and gathered up Maury Maverick Jr. and, over his complaints, took him to the radical meeting. It was held at Mario's, a restaurant on San Antonio's west side. As we arrived, Kunstler was speaking and introducing a young La Raza activist, Mario Compean. Compean shortly began to castigate lawyers in general and "gringo lawyers" in particular for their failure to ever take a stand for poor Mexicans. Maury became increasingly agitated and insisted that I take him home, because he was not going to sit through this nonsense. Just as Maury's anger peaked, Compean announced that there was only one "gringo lawyer" in Texas that ever did anything for the Mexican and that was Maury Maverick Jr. Suddenly, Maury's interest in the gathering increased dramatically.

These events convinced me that we should seek somehow to institutionalize this group of dissidents within the bar structure. If nothing else, we could make our trips to such gatherings tax-deductible business trips. Roy Mersky of the UT Law School helped me through the labyrinth of the bar bureaucracy, and the state bar created a new section, known as the Individual Rights and Responsibilities Section. We had to adopt this name in order to obtain approval, as it mirrored the name of a similar section of the American Bar Association.

I chaired the first meeting of the section at the state bar convention in 1971, and my task was to fend off the young radicals as they sought to change the name to the Individual Rights Section. The section has survived these many years and has, I suppose, provided an outpost on the left within the Texas bar structure. As this is being written, I have just returned from the first reunion of the Wimberley conference, a reunion sponsored by the Individual Rights Section. It was a most sentimental occasion and was reassuring that the fires that brought us together thirty years earlier had not been totally extinguished.

9
A Gleeful Return to Austin

ANN AND I, like many of our generation who had gone to college in Austin, spent our Dallas years pining to return to the capital city. Dallas was a pinched-up, buttoned-down wasteland for the soul. Austin, on the other hand, seemed an oasis for mind and body, with its lakes, rivers, and a host of madcap adventurers. The lure finally became overwhelming.

For years, as we had discussed getting back, I had stumbled over the traditional litany of what will I do and how can I support my family. Finally one day, I was able to divide the inquiry in my mind and address each question separately. Do we want to leave Dallas? Yes. Do we want to move to Austin? A thunderous yes. Having made those decisions, the fog cleared. Now the only question was what to do, and that proved quite simple. I ran into Sam Houston Clinton at a political party in Austin, and he asked whether I might be interested in joining him in his Austin law practice. Instantly it was a done deal.

Sam had, at the time, one of the least lucrative, most stimulating law practices in the state; he was general counsel for the Texas AFL-CIO, principal attorney for the Texas Civil Liberties Union, and an emerging criminal lawyer, as Austin hippies were increasingly being busted for pot. Sam's and my acquaintance went back years. Our fathers had been friends, and Sam had at one time taught my Presbyterian Sunday School class in Waco. I went to Sunday School in order to be eligible to play church league basketball. Sam had returned to Waco after World War II to run for the Texas legislature, and he needed religious cover to run for office in the Bible Belt. Teaching Sunday School probably seemed harmless enough. Nevertheless, Sam lost his legislative race, I lost interest in basketball, and I doubt either of us had been inside a church much thereafter. We had been in contact over the years through Young Democrats, union gatherings, and late-night socializing, thus it was a natural fit. I had in fact taken Sam's spot with the Mullinax & Wells law firm when I joined it in 1957, Sam having moved on to a more salubrious life in Austin.

Austin was also a natural fit for Ann and me. We already had a pool of friends there. Our dearest friends from Dallas, Sam and Virginia Whitten and their children, had earlier moved to Austin when Sam joined the UT Library School faculty. George Schatzki, with whom I had practiced law in Dallas, was now on the UT law faculty. The writers Bud Shrake and Gary—sometimes known as "Jap" because of his resemblance to a sumo wrestler—Cartwright were wending their way down to Austin from Dallas. These Dallas refugees, coupled with our political acquaintances and river-running buddies, gave us a ready-made social network of some magnitude—a network that had at its core political dissent and an abhorrence of prevailing Texas social taboos.

We purchased a somewhat frayed house on two acres in Westlake Hills that had spectacular views of Austin in the distance. There was a grand swimming pool that sat at the head of a small canyon and managed to leak hundreds of gallons of water at irregular intervals. The contrast with our Dallas Lovers

Lane house was as dramatic as the contrast between the lifestyle of Dallas and Austin. For those who know Westlake now as an upscale white-flight suburb of Austin, the Westlake of those years would be unrecognizable. The school system, known as Eanes, only had one tiny school with six grades, so for the upper grades, children went to Austin. The population was divided between cedar choppers living in tumbledown quarters and those occupying the occasional somewhat grander digs, but all were scattered down gravel roads bearing little resemblance to today's orderly middle-class environs.

Westlake was developed by Emmett Shelton, a longtime Austin criminal lawyer. He acquired much of the property by taking quitclaim deeds from the cedar choppers, whose families had squatted on the land for years, as it was generally perceived as worthless during the 1930s and 1940s. Emmett explained that he earned the property by representing the choppers in their criminal cases when they could not afford a legal fee for their defense. Emmett figured that he had represented Westlake families that had not had a natural death in the male line for several generations.

Our introduction to Westlake came shortly after our arrival. We had agreed to host an antiwar fund-raiser at the house, probably for the Vietnam Veterans against the War. In all events, it was widely attended. The music was provided by a group that called themselves the Viet Gong, or some such moniker. As was often the case at such gatherings, the music was loud and cacophonous, echoing through the peaceful hills. At some point in the evening, the town marshal, who was our neighbor, arrived in response to a number of totally justified noise complaints. I remember thinking that I had placated him by toning the music down and promising to shortly end the band's efforts. The marshal's report to the town council was more alarming. He claimed that he had been surrounded by a bunch of stoned hippies who kept screaming "Off the pig." Who knows, it was a large yard, and I suppose something like that could have happened. In all events, it cemented our reputation among one element of Westlake society.

At the time of our move, our oldest child, Cecile, was 11, Dan was 9, Clark was 6, and Ellen was 4. Shortly, we located in the area kindred souls with children of comparable ages. Our old neighbors from UT days, Betty and Leslie Ward, lived around the bend from us. Betty taught at Eanes, and they had two children the ages of Ellen and Clark. Bob Palter, of the UT Philosophy Department and one of my plaintiffs in the loyalty oath case, was nearby with four children of his own. Our kids had grown up with the Whitten children, and although the family lived in town, we were together regularly. Consequently, I think our children felt reasonably at home in short order.

The center of our social life in those first years, our country club if you will, was Scholz Garden. The children claim they were raised there, which is a slight exaggeration. They did, indeed, spend many a Friday romping around the garden with the Whitten kids. Bill Brammer made it immortal in *The Gay Place* as the "Dearly Beloved Beer and Garden Party." His description remained apt for many years:

> There were twenty or thirty others, mostly young people sitting at the unwashed tables, and through the windows of the building the boiled faces of some of the longtime customers were visible.

As he said, "the garden was shielded on three sides by the low yellow frame structure, a U-shaped Gothicism, scalloped and jig sawed and wonderfully grotesque."

The garden itself covered probably a half acre and was devoid of greenery except for the old elms that sheltered its many tables. In those years, the underfooting was white caliche, with the result that if you went to the garden in your lawyer's blue suit, there was no concealing that fact, for your pant legs would be splotched with white dust up to your knees. The old tables covered with their red-checked cloths could easily be moved as one's group expanded, and it seemed that no matter what the hour, a stop by the garden always produced an acquaintance whom you really wanted to see. There was an accepted notion that contributed to the sense of congeniality: If you chose to sit in the garden, as distinguished from the inside bar area, it signaled a welcome to be joined at your table. Thus, as you surveyed the tables on a spring evening, you could take your choice of companions: Henry Holman and the Horses' Association or, more affectionately, the horses' asses, reminiscing; Sam Clinton and his lawyer cronies discussing the day's legal exploits or latest drug bust; David Shapiro, sitting alone with his stack of left-wing periodicals, was particularly helpful if you had any questions about any political race of recent decades; or, finally, if you were in the mood for a little abuse, you could always join Stanley Walker, the resident misanthrope. Of course, during legislative sessions, you could choose to be regaled by the legislative crowd that congregated on most weekday evenings.

In those years, liquor by the drink was to be found only in private clubs, to which none of us could or would belong, and beer was the drink of choice. The food was marginal at best, but some evenings the conversations were so stimulating one forgot and lapsed into ordering the sausage and kraut or some other filler.

It seems strange to write about a beer garden as if it were anything more, but it was the sum of its parts—the hundreds who found nourishment under its elms. American television audiences have been captivated for years by a program called *Cheers*, concerning a bar and its patrons and their foibles. The patrons of the garden were more numerous, more diverse, and led vastly more complicated lives. Every progressive politician, state and local, would have at least one fund-raiser at the garden, and as victories became more numerous, it was also the site of happy victory gatherings. But the soul of the place was found in conversation; something about the place engendered leisurely discourse.

The core for us was Henry Holman, the carpenter and Democratic activist. On Friday evenings, his table began modestly enough with a few of the Horses' Association gathering after work; by evening's end the table often embraced fifty or more of our crowd. We sat with people we knew only from the garden and we talked. We made political schemes, told endless stories, planned river trips and Mexico adventures, and simply enjoyed one another's eccentricities. In this age of electronic communication, whatever that means, those long, lazy evenings seem the best of times. In fact, Ann's political career, and those of other Austinites of that era, was born around the tables of the garden.

Despite the politics, the beer drinking, and the chatter, there was ample time for romance in this extended crowd of Texas liberals. We used to joke about creating a wall chart of marriages and liaisons in order to better understand the interplay, but the task was too daunting. The degrees of separation were not many. Bob Eckhardt was one of our great heroes of the era, serving with distinction in the Texas house and the U.S. Congress. Bob, along with Willie

Morris, was reputedly one of the principal figures of *The Gay Place*. When I first met Bill Brammer around the tables in the mid-1950s, he was married to the ravishing Nadine. I looked up one day, and Nadine had become Bob Eckhardt's second wife, and Bill had married the equally stunning Dorothy Browne. The next thing I knew, Eckhardt had divorced Nadine and was married to Willie Morris's first wife, the lovely Celia. In the meantime, Dorothy and Bill had split, and Dorothy was married to the Houston legislator and Scholz habitué Arthur Vance. My patient and equally lovely wife Sandy, whom I did not know in those years, got her introduction to Austin as a waitress at the garden during the late 1960s. Too much can be made of this, but the fact remains that the Texas liberals of that era all seemed to know one another one way or the other.

Sam Clinton was part of the permanent scene in those years. Indeed, Sandy can still bitch about slogging beer to Sam and his lawyer buddies for hours, only to receive a two-bit tip. Sam was at the same time the soul of patience with friends who fell astray of the law. Richard Quinlan, a postman and troublemaker, was one of the crowd. One day I overheard him conferring with Sam in our office about a current legal predicament. Richard and Dan Strawn, a sometime writer and frequent bore, had been in deep conversation at the garden when a young woman of their acquaintance sat down at the table and injected herself into the discussion. Quinlan responded by calling her "a stupid, fucking bitch"; she got up and hied herself to the municipal court and filed abusive-language charges against Quinlan. He was now in Sam's office seeking advice about his upcoming trial. Richard had demanded a jury and was querying Sam about his defense; his current plan was to defend on the ground of the truth of the statement. Sam patiently explained that it was unlikely that the court would permit such a line of attack. He suggested they read the statute at issue, pointing out that the "abusive language" must have been, in the words of the statute, calculated to cause a breach of the peace. Sam suggested this might prove a more successful defense. Some days later, Richard was back to describe the trial. Sam had been right; the court did not allow Richard to offer testimony that the prosecuting witness was a stupid, fucking bitch. On the other hand, Richard had successfully relied on the other defense. Quinlan had called as a witness a drinking buddy who testified to the effect that they saw each other frequently at the garden and routinely exchanged the greeting "How are you, you old horse fucker you," without causing any disturbance of the peace. On the strength of this testimony, the jury had acquitted. Unfortunately, Richard, so buoyed by the victory, had confronted the prosecuting witness in the courthouse lobby and exulted with, "See, you stupid, fucking bitch." She had turned on her heels and refiled. Sam was required to explain to Richard the legal subtlety that language that might not produce a breach of the peace at Scholz's might well be calculated to do so in somewhat more sober environs, such as the courthouse lobby.

Sam was hard of hearing, and our office was not soundproofed; as a result, I overheard much that transpired. Some days after the last Quinlan visit, I heard Sam dictating a letter to the injured party on behalf of his client, Quinlan. The purpose of the letter was to assure her that if she would dismiss the new charges, she could be certain that Mr. Quinlan would never in the future direct profanity at her. The letter went on to advise that, inasmuch as Mr. Quinlan had been permanently banned from Scholz's, her chances of a meeting were remote. The Quinlan matter thus came to an end, a tribute to Sam's enduring

patience.

One of the more improbable figures around the garden was Louis Buck, the 350-pound veterinarian. Louis made house calls and was much favored for this reason. It was rumored that he was the last-resort source for speed for Bill Brammer in Bill's later years, dispensing pooch pep pills to help Bill through his darker days. In the sixties, Louis decided to become an Episcopalian minister and entered the seminary. Many seminarians of that era attended to avoid going to Vietnam, since a religious education was a source of draft deferments. Louis was much too old for that concern and was there out of his own convictions. Upon his confirmation as an Episcopalian minister, the bishop assigned him to a church in Killeen, Texas. Killeen was the home of Fort Hood, the nation's largest army mechanized post and a town rife with war fever. After a few weeks, Louis was back in the garden recounting his success as a fledgling minister. When asked the size of the congregation, he explained that it was 230 on his first Sunday, when he preached on the evils of war. After his third Sunday, when his sermon revealed that the makers of war could not be received into heaven, the flock had dwindled to 88. We expressed concern about the decline in attendance, but Louis was unfazed. He explained that the Book of Common Prayer urged the necessity of purifying the congregation, and he felt that he was well on the way to achieving that goal. The church hierarchy did not share Louis's view, however, and he was shortly thereafter moved on to other pastures. A few years later, he became embroiled in a rancorous dispute with the Episcopal bishop of Texas over some free-speech issue, and his card was jerked. He returned to Scholz Garden none the worse for wear.

On reflection, those Scholz years were a time of innocence. Our politics were pure—we did not win much in the way of elections. Our enemies were gross and obvious. The state of Texas, the city of Austin, and the University of Texas all were run by smug old-guard conservatives who perceived their role to be to preserve the status quo—in other words, to maintain racial segregation at the University and everywhere else, to stifle labor unions across the state, and to harass the antiwar movement at every turn. As a result, our job was fairly simple, as it required no great sophistication to oppose this old order. Somewhere along in the mid-1970s, the old Scholz scene dissolved. Liquor by the drink and pot smoking probably contributed, as neither were available around the tables of the garden. An old Scholz regular, the feckless Fletcher Boone, opened a joint called The Raw Deal in the grungy part of Sixth Street, and as many of us drifted off to this more happening place, our community began to fracture.

The garden still survives and is the site of periodic fund-raisers, victory celebrations, and birthdays, but the old mood seems to have deserted it, as has the old crowd. Sandy and I went down recently to the eightieth birthday of Mary Holman, held next door in the Saegarunde Hall, the German singing club that adjoins Scholz Garden. Many familiar faces were there, and, just like my own, they were old faces. But there is surely no substitute for old friends. James Gardner, a contemporary with whom I spent many an hour lamenting the demise of the syndicalist movement, was there. Now, in his sixty-fifth year, James reported that he had gone back to his first love—motorcycle racing. Years earlier, he had been forced to give up racing after a serious accident that left him with a wrist in constant pain. He reported with great glee that he now had a few minutes each week pain free, and those were the few minutes it took

him to circle the racetrack on his bike. The winner of six straight races, he had a new lease on life. I suppose we would all be better served if we could reclaim the spirit that animated the old dearly beloved garden.

10
Changing the Face of the Texas House of Representatives

FEDERAL COURT ORDERS based on the notion of one person, one vote effectively revolutionized the Texas senate between 1966 and 1970. In fact, there were enough progressive votes in the senate by the end of that decade to play a significant role in the legislative process, to the extreme consternation of the lobby interests that ran Texas. The Texas house was another matter altogether, as there the lobby domination of the big-city delegations gave the conservatives veto power over any meaningful change. The 1970 census set the stage for a full-scale battle over the makeup of the Texas legislature, both the senate and the house. The Texas Constitution requires the legislature to apportion itself at its first session following publication of the U.S. decennial census.

By 1970, Texas had a population of some 12 million, and the state had become increasingly urban over the decade since the last census. This growth meant that the existing seats had altered dramatically over the decade and must be redrawn. Until 1966 the Texas Constitution prevented any county from having more than seven members of the Texas house. This provision, which obviously violated the constitutional guarantee of one person, one vote, was nullified by the federal court in *Kilgarlin v. Martin*. That decision helped create the backdrop to the reapportionment donnybrook that followed the 1970 census. The Texas house has 150 members, and based on that year's census, an ideal population for a house seat was to be 75,000 people. As a result, the state's nine urban counties were to have 76 seats in the House, and the four largest counties, Harris, Dallas, Tarrant, and Bexar, were to hold 61 seats. This was destined to be a dramatic realignment from rural to urban in the makeup of the legislature, and it meant that control of the big-city delegations was critical to continued lobby control of the Texas house.

The 1971 session of the Texas legislature did not take kindly to its redistricting responsibilities. Although mandated by the Texas Constitution to redistrict, the Texas senate simply failed to do so. The Texas house did redistrict, but its plan was promptly declared unconstitutional by the Texas Supreme Court.

Under the Texas Constitution, the failure of the legislature to produce redistricting triggered the convening of the Legislative Redistricting Board (LRB). By law, the board consisted of Lieutenant Governor Ben Barnes, Attorney General Crawford Martin, State Comptroller Robert Calvert, Land Commissioner Bob Armstrong, and Speaker of the Texas House Gus Mutscher. Of these, only Bob Armstrong was not tied to lobby interests. Mutscher was headed for indictment in the Sharpstown Bank scandal, Barnes had not been charged with any crime but was scarred by the same scandal, Calvert was senile, and Martin had been the handmaiden of lobby interests throughout his lengthy career. It was not what you would call a good-government group, except for Armstrong. A majority of the board initially refused to even attempt

redistricting of the Texas house, preferring to keep the status quo. The Texas Supreme Court again was brought into action, and in *Oscar Mauzy v. Legislative Redistricting Board*, it ordered the LRB to proceed with house redistricting.

On the senate side, the principal battles emerged around preservation of the progressive victories of the late sixties, though we are only marginally concerned with those questions at this juncture. Ben Barnes, as lieutenant governor, was the principal architect of the senate plan, and his hand was apparent in the redrawn senate seats. Clearly, he wanted to rid himself of Bill Patman. Bill was the son of the great old populist Congressman Wright Patman, and he drove Barnes and the 87 lobby crazy. The senate plan took Bill's coastal home county of Jackson and gave him counties all over central Texas, where he was a total unknown. It didn't work, though, because Bill won anyway. Barbara Jordan wanted to go to Congress, and the legislature obligingly had drawn her a congressional district. This gave Barnes leeway to redraw her Houston senate seat. Curtis Graves, an outspoken Black house member from Houston, seemed the logical successor to Barbara's seat. They sure didn't want Graves in the senate. The LRB, under Barnes's leadership, redrew the Jordan senate seat to eliminate the Black/Mexican American majority in the district, effectively eliminating Graves as a candidate to succeed Jordan, which left Texas without a Black member of the senate for another decade. In my hometown of Waco, a great progressive Democrat by the name of Tom Moore had been an outspoken reformer in the Texas house and was a likely winner of a senate seat in that Central Texas area. To stop Moore, Barnes took Waco and McLennan Counties and tied them for the first time to a West Texas district that ran all the way to Abilene. This move cost Tom Moore the seat and deprived the senate of an elegant and courageous reformer. Such political jockeying characterized senate line drawing as everyone began to learn the intricacies of redistricting. Liberals won some and lost some, but the progressive bloc in the senate was largely preserved.

It was, however, the Texas house redistricting that was for all the money, marbles, and chalk. The dominating issue before the Legislative Redistricting Board was the treatment of the urban counties. There was an enormous push for creating single-member districts in the big counties, particularly Dallas, San Antonio, and Fort Worth. Blacks and Mexican Americans saw this as their first opportunity for true political participation and to overcome years of futility. The year 1966 had produced the first Black members of the Texas legislature in the twentieth century. In 1971, at the time of reapportionment, Barbara Jordan was in the senate, and two Blacks occupied seats in the Texas house, Curtis Graves from Houston and Zan Holmes from Dallas. In addition, a smattering of Hispanic legislators had been elected, but reality for Texas minorities was not far removed from the years of total exclusion.

Bo Byers was chief of the *Houston Chronicle's* Austin bureau, and an article by him in October 1971 fairly depicted the struggle in the Legislative Redistricting Board: "The big issue, the one that has the board on high center, is whether to draw 150 single-member districts or whether to allow multimember districts in metropolitan areas." Byers saw Attorney General Crawford Martin as the key vote:

> It would be a fair assumption that Martin . . . as a conservative Democrat, would prefer multimember districts particularly on the countywide basis which has existed for years in Dallas, Bexar (San Antonio) and Tarrant (Fort Worth) counties. . . . Conservative

Democrats have dominated election of state representatives in those three big-city counties. Single-member districts undoubtedly would lead to election of more liberal Democrats, Republicans, blacks and Mexican-Americans in those counties.

Dallas County graphically demonstrated the issue. The county had a population of 1,300,000, which made it more populous than fifteen states in the country. Dallas was allocated eighteen seats in the Texas house. Were these members to be elected from individual districts of 75,000 people or were all eighteen to be elected from a single countywide district? The conservative interests that ran the state and Dallas understood full well the threat of individual legislative districts. Crawford Martin was bombarded with communications from conservative pooh-bahs about the virtues of a countywide district. George Bock, chairman of the Dallas County Democratic Party wrote: "If the County is split into separate districts, those Conservatives who have been working within the Democratic Party of Dallas County will not be able to elect future Conservatives to the Legislature and they know it. The Party will lose the virility of their volunteer efforts. And we will most certainly wind up with 5 or 6 Republicans." Allen Melton, another leader of the group, wrote: "There is considerable agitation on the part of Oscar Mauzy, Mike McKool, et al. to redistrict Dallas County into single-member districts. This is, as you will recognize, a calculated effort on the part of the liberals to get more liberal Democrats elected to the Legislature from Dallas County. The next in line to gain are the Republicans. Conservative Democrats will de-escalate to zero under this plan." The battleground was clearly defined for the Legislative Redistricting Board.

The board's task was complicated by what to do about Harris County (Houston). In 1966, when the federal court struck down the Texas constitutional limitation of no more than seven members of the house from any one county, the court had ordered immediate redistricting. By that time, the Harris County Democrats, a liberal organization under the leadership of Billie Carr, had become a political powerhouse in the county. Billie was the unelected Mayor Daley of Harris County liberals and had put together a formidable get-out-the-vote operation. The conservative-dominated legislature in 1967 was fearful 89 that if Harris remained a countywide district, the liberals might sweep the county. Pragmatic as always, the legislature carved Harris into three legislative districts, thereby forestalling a liberal sweep, but by 1970 no one was particularly happy with this arrangement. Thus, the RB carved Harris County into individual legislative districts for the upcoming 1972 elections. When it came time to deal with the state's other urban counties, the board heeded the conservatives' plea and ordered countywide elections in Dallas, Bexar, and all the other big counties.

A suit was filed of course. The original attorneys were my old friends Tony Korioth and Oscar Mauzy, but in short order I took over responsibility for the case. It became my career achievement in the field of voting rights and a major milestone in the evolution of minority voting rights.

A plaintiff has one special right, the exercise of which is often pivotal. The plaintiff has the choice of forum. By that we mean the right to choose where the lawsuit is filed. There are limitations, but skillful plaintiff lawyers have substantial latitude in forum selection, and the law by and large honors that choice. Our suit obviously had to be filed in the federal court; the likelihood of the state judiciary throwing out the establishment plan was laughable. Although in the federal system one theoretically cannot pick a judge, you *can*

pick where to file your case. There was but one federal judge sitting in Tyler, Texas: William Wayne Justice. Justice, a progressive Democrat, had been appointed to the federal bench in 1969 by President Johnson and had begun to establish a reputation for fearlessness. Every case filed in the Tyler division was assigned to him. In Dallas, for example, there were a number of sitting federal judges, many of whom would have been excellent from our point of view, but there were too many clunkers sitting in Dallas to gamble on drawing a hostile one. Consequently, to attack the redistricting plan, Tyler was the only reasonable choice.

But we did not have any plaintiffs in Tyler, so I called my old friend Bill Kugle, who practiced law in nearby Athens, Texas, and asked him to find us a Tyler plaintiff. Bill was a onetime law partner of Wayne Justice and one of the world's great running buddies, as we used to say. His headstone in the state cemetery reads in part: "Bill Kugle never voted for a Republican and had little to do with them." Bill called back in a few hours and gave me the name of Diane Regester. She became the lead named plaintiff, although a few weeks later I added new plaintiffs as a precaution. As the case became more prominent, I sometimes worried about the possibility that Kugle had just made up the name as a sort of a joke. I am sure there was such a person, but I never spoke with her. I doubt she ever learned of the turmoil created by the case styled *Diane Regester v. Mark White*.

The Legislative Redistricting Board acted in late October 1971, and our suit was filed on November 2, a few days later. We named, among the defendants, the chairs of the Smith County Republican and Democratic Parties, thus giving local plaintiffs and defendants for venue purposes. We coordinated strategies with the Mexican American Legal Defense Fund (MALDEF) on behalf of their interests in Bexar County and elsewhere, and they promptly joined the case on our side.

Our initial strategy was to attempt to try the case in front of Judge Justice as a single judge and avoid the appointment of a three-judge court. This plan was shortly frustrated by the filing of three additional suits. San Antonio Republicans filed a challenge to the senate seats in Bexar County, Curtis Graves filed suit challenging the realignment of Barbara Jordan's senate seat, and, in Dallas, conservative Democrats filed a stalking-horse case paralleling ours for the obvious purpose of trying to get the case transferred to Dallas and away from Judge Justice. When the three-judge-court act is invoked, the duty of appointing the three-member court falls to the chief judge of the Circuit Court of Appeals. The statute provides that one member of the court shall be the trial judge before whom the case had been filed, and that at least one of the members would be an appellate judge from the circuit court. With four lawsuits now filed, we had four potential trial judges having a claim to be a member of any three-judge court. Our worst fears were suddenly realized. Chief Judge Brown of the Fifth Circuit ordered a consolidated pretrial conference in Dallas before District Judge Joe Estes, who was, in our view, the worst possible choice in the state. An Eisenhower appointee, he embodied the reactionary old guard.

This pretrial conference was the first of many critical moments. It quickly developed that the purpose of the conference, at least from Judge Estes's point of view, was to force me to relinquish our venue choice before Judge Justice. The federal judges in San Antonio and Houston had advised that they would gladly surrender their entitlement to serve on any three-judge court. Judge

Justice had planned to attend the conference but had become ill, and we had no indication from him that he would relinquish his place on the court. Without Judge Justice's acquiescence, Judge Estes's only option was to try to bludgeon me into agreeing that our Tyler case could be consolidated into the Dallas case. I repeatedly refused and insisted that we wished to maintain our case before Judge Justice. Judge Estes got madder and madder and finally turned to Oscar Mauzy, who was with me, and said, "I know a good lawyer like you, Oscar, would agree to this practical solution." Oscar didn't take the bait but deferred to me, and I persisted. At this point, when Judge Estes was at a boiling point, Ed Idar of MALDEF asked to know under what authority Judge Estes was acting in holding this pretrial conference. This pushed the judge over the edge; he announced lividly, "§28 U.S.C. 1984," terminated the conference, and stormed out.

Later, as Ed, Oscar, I, and others of our allies were recovering our balance out in the fresh air, we realized that there was no Section 1984. We became mildly hysterical trying to decide if Judge Estes was trying to send us an Orwellian message about the future of our suit. As matters turned out, however, Chief Judge Brown of the Fifth Circuit saved us by appointing identical three-judge courts in all four cases: Judge Justice, Judge John Wood from San Antonio, and Circuit Judge Irving Goldberg. Once I saw Judge Goldberg's name, I knew that we were in reasonable shape, and all the abuse from Judge Estes had been worth it.

With the pretrial skirmishes over, the magnitude of trial preparation hit with full force. The appointment of the three-judge court was issued on December 15, 1971, and we went to trial six weeks later. In simple litigation, pretrial preparation and discovery takes months, sometimes years; we had no such luxury. I am sure the court felt that we had asked for action, and they were going to give it to us. The reality was that if we were going to have any effect on the 1972 legislative elections, immediate court action *was* necessary. The deadline for filing for office was January 31, and the primaries were to be held in May 1972. If any of these election districts were to be changed, modifications had to be in place before the candidate filing deadlines to enable potential candidates to pick their slots. Some time in December, the court pushed back filing deadlines for a month to give everyone a little breathing room.

It became apparent that we could not possibly develop evidence in all of the state's multimember counties in such short order. With court approval, it was agreed that we would proceed only with Dallas and Bexar Counties. I was to take responsibility for Dallas, and Ed Idar and MALDEF for Bexar. Our preparation was aided enormously by Armand Derfner of the Lawyers' Committee for Civil Rights under Law, the Washington, D.C.–based organization that pursued civil rights issues across the South. Armand, at the time, was the nation's voting rights guru. The Republicans were in the lawsuit on our side with two extremely talented Austin lawyers, Tom Gee and Jim George, but this was a constitutional challenge, and, at the time, the courts had refused to recognize political discrimination as actionable. If we were to win, it would have to be on the basis that the countywide districts discriminated against racial and ethnic minorities. Oscar Mauzy was originally going to act as co-counsel, but it became clear that he would be much more valuable as a historical expert on Dallas politics, so we slid Oscar across the table to the witness side.

The stakes were huge for the conservative establishment. Leon Jaworski, then president of the American Bar Association, announced from his Houston skyscraper that he was volunteering his services to the state to defend the integrity of the system. Jaworski later went on to be the special prosecutor in Watergate and is credited with helping to hound Richard Nixon from office. At this time, however, he was simply stepping up to the plate for the lobby. His Houston firm, Fulbright & Jaworski, was then, and is today, one of the state's most influential power brokers. This was not Jaworski's first such effort; a few years earlier he had "volunteered" his services to defend racial segregation in the University of Texas dormitory system. His presence in our case simply served to highlight its importance to the folks who ran Texas. Before we were through, we were tripping over lawyers everywhere.

None of the lawyers involved had ever been on such a fast track as we found ourselves. The pretrial order authorized the taking of oral depositions on only a twenty-four-hour oral notice. We would be in the middle of a deposition in Austin, and suddenly an opponent would stand up and announce that depositions would be taken in Dallas the next morning from a list of witnesses we had never heard of. I would never have made it without the help of an old law partner from Dallas, John Collins. John helped cover depositions, prepare witnesses, and generally bail my ass out.

We got it all done somehow. We worked all through the Christmas holidays, holding our final pretrial conference before Judge Justice on New Year's Eve. This was one of those times in a lawyer's life that puts real strain on a marriage. Ann and I had my relatives visiting from out of town for the holidays, and I was gone almost the entire time. No matter how understanding one's family may be, it is almost impossible to successfully explain to your spouse why a piece of litigation can take precedence over family obligations. I did the best I could on all fronts, but it was a frantic time. All we could do to prepare was to cobble together as much evidence as we could that might bear on the issues before us.

Between Christmas and New Year's I took the deposition testimony of the principal state officials of the time, including Attorney General Martin, Lt. Governor Ben Barnes, and many of their functionaries. None of them was particularly forthcoming about the LRB's redistricting process. Barnes testified that he was a strong supporter of single-member districts for all the urban counties, and he knew that Land Commissioner Armstrong was also. He felt that the speaker, the comptroller, and Attorney General Martin were opposed, so he never raised the issue with the board. Martin testified that he had no opinion on the question and simply followed the staff recommendations to keep countywide elections everywhere but Houston. The staff all testified that they made no recommendations and were awaiting instructions from the board as to the treatment of the urban counties. So we were left with the somewhat implausible explanation that the most critical issue of the moment, single-member districts, simply fell between the cracks. I suppose sillier things have occurred in the political process, but it struck me that we were dealing with total duplicity on the part of Attorney General Martin.

None of the officials were able to explain why they decided to divide Houston into single-member districts and maintain Dallas as an at-large county. This inconsistency obviously troubled the court, for its ultimate opinion noted:

> Finally, the State argues that multi-member districts for metropolitan areas have long historical roots in Texas. . . . it simply does not explain the different treatment given to

> Houston. . . . We are at a loss to understand how Texas history can support a compelling state interest in multi-member districts for all cities when that history has suddenly done a complete about-face for the largest metropolitan area in the State.

The differing treatment of Harris and Dallas Counties gave the state some credibility problems, for, just five years earlier, Texas officials had argued to the federal courts that the legislature had cut Houston into subdistricts because of a governing state policy that required subdistricting any time a county reached one million in population. This state policy didn't work for the lobby in 1971 after Dallas crossed the million mark, so, "what the hell," the policy disappeared. Obviously, the redistricting process was fraught with inconsistencies. Although prejudicial to the state's position, such evidence was not sufficient to get us home with a win. Our claim was basically that the at-large system of elections in Dallas foreclosed any meaningful opportunity for minority electoral success. The U.S. Supreme Court had intimated on several occasions that it might be receptive to the argument that an at-large electoral system unfairly discriminated against Black voters. But till now no one had ever won such a case before the Supreme Court. One-person, one-vote cases were relatively simple mathematical exercises. Our challenge was infinitely more complicated, for we were required to delve into the political complexities of each community and establish in real-world terms that countywide elections operated to deny Black voters meaningful participation in the political process.

Unfortunately for us, the Supreme Court in early 1971 had reversed a lower-court decision that had invalidated the at-large legislative districts of Indianapolis. The Supreme Court admonished, among other things, that there was no evidence that the exclusion of Blacks from the legislative delegation was anything more than the fact that Republicans typically won in November, defeating their Democratic opponents, many of whom had been Black. In that case, *Whitcomb v. Chavis*, the Court had made clear that multimember districts were unconstitutional only if they operated to "dilute" the vote of a racial minority within the district. Of course, none of us who were getting ready to present this case knew what constituted dilution. We only knew that the at-large districts in Indianapolis didn't dilute.

I was challenged by early readers of the manuscript for this book to explain in simple terms the voting rights concepts that underlie the *Regester* case and the notion of dilution of minority voting strength. Here is my best effort. First, this is my take on the judicial process. Judges, especially federal judges appointed for life, do essentially what they want to do. By and large they have strongly held points of view or they never would have percolated to the top of the heap and made it through the appointment process. The lawyer merely tries to provide argument and evidence to make it easy for the court to follow its own inclinations. Basically, the law is concerned with practicalities. What is going to be the effect of this decision, and are there risks of unintended consequences lurking in the underbrush? As you move into litigation about public-policy issues, these questions become more complex, and voting rights provide a prime example of the competing considerations. Still, the questions are intensely practical. The practical question for Dallas might be phrased this way: Given that Blacks make up some 15 percent of the population of Dallas, why is it that no Black was ever elected to the legislature from 1900 to 1966?

How did countywide elections of legislators in Dallas County in 1971 affect the opportunity of the Black community to effectively participate in the political process? They clearly could vote, but was that vote meaningful or

were Blacks submerged within a mostly hostile white electorate? Blacks constituted roughly 15 percent of the county population, and they lived in predominantly segregated areas of South Dallas and South Oak Cliff. Racial segregation in the school system, in places of public accommodation, and in everyday life was the rule, as it had been for generations. Although there was an active political movement within the Black community, voter turnout was significantly lower than in the dominant Anglo precincts. It was still commonplace for white candidates to use racial campaigning tactics against Black and Black-supported candidates. In this context, did it seem at all likely that a Black social worker living in South Oak Cliff had any chance of defeating a white businessman in a countywide Democratic primary? Any honest observer would have said not the chance of a snowball in hell. But our Constitution doesn't guarantee success at the polls and doesn't require proportional representation, and this case was being tried as a constitutional attack under the Fourteenth Amendment. We were required to develop proof that the system as it actually functioned locked out effective minority participation. We were navigating largely uncharted waters.

In the few weeks preceding the trial, we spent hours brainstorming about how to differentiate Dallas elections from those in Indianapolis. Our trial preparation focused on proving a laundry list of distinctions between Dallas and Indianapolis in the hope that some of it would be persuasive to the court. In addition to Oscar Mauzy as a witness, I had the aid of Dan Weiser and his encyclopedic knowledge of Dallas politics. Dan, a Ph.D. in mathematics and a longtime liberal activist, simply knew and retained everything about Dallas politics.

From any angle, this was a blockbuster case. It ultimately required two full-blown arguments in the U.S. Supreme Court. It pitted a group of young liberal activists—Black, Hispanic, and Anglo; lawyer and non-lawyer—against the full weight of the conservative Democratic establishment that had ruled the state for all of my lifetime. The progeny of the case rewrote the political face of Texas and the South over the following decade. The case also provides an opportunity to demystify the law and the trial of complex lawsuits, for, if nothing else, it is an example of lawyers scrambling around in the unknown in a high-stakes battle with no clear notion of where they are going.

Thankfully, the case was heard in Austin, where we had access to resources that would not have been available elsewhere. The Texas AFL-CIO put up some funding, and Oscar Mauzy and Senator Babe Schwartz of Galveston turned their senate staffs over to us for the duration. They did research, wrote memos, and copied thousands of documents on the state's copy machines. We found some amusement in the fact that the state, unwittingly, was paying the costs of both sides of the lawsuit. Among those instrumental in that effort were Oscar's aide, Mike Levy, who later founded *The Texas Monthly*, and my old friend Claire Korioth, the daughter of Federal Judge Mac Taylor of Dallas, mentioned earlier.

Trial began on January 3, 1972, eight weeks after suit was filed. The three judges actually sat for three days and heard testimony. This in itself was unusual, for three-judge court cases were normally decided without live testimony. Here the court heard testimony and made evidentiary rulings, a first-time experience for all of us. The court also had before it the dozens of depositions we had taken before trial as well as crates of exhibits, including old election returns, legislative histories, and census data. Four cases were tried

simultaneously, the challenges to the Bexar County and Dallas County at-large house districts and the challenges to the senate alignments in Harris and Bexar Counties. Finally, the conservative Democrats from Dallas, who had intervened as a roadblock to our lawsuit, were trapped and had to sit mutely beside us at the plaintiffs' counsel table.

The courtroom was simply awash in lawyers, some helpful, some an impediment. I ended up in a bitter struggle with one of the lawyers ostensibly on my side, a lawyer from Dallas who seemed more interested in showboating than in trying to understand what the case required. I was planning to call George Allen, an extremely articulate Black member of the Dallas City Council. Suddenly my co-counsel announced that he planned to question Allen. I was horrified. He had, in my opinion, already butchered one of our witnesses because of inadequate preparation. I called Oscar aside and asked him to find Allen, hide him from our unhelpful co-counsel, and get him to agree that I would put him on the stand. Oscar did so, and Allen concurred. When my "colleague" learned that I was calling Allen as my witness, he had a screaming fit in the lobby of the federal court. I outshouted him, and George Allen held his ground. I put Allen on the stand, he was a superb witness, and all seemed serene in the courtroom. Tensions between lawyers on the same side of a case are inevitable in difficult litigation, but this was the worst donnybrook in my experience. I was the lead lawyer, and I was not going to let this guy screw up another witness—to hell with hurt feelings.

Our proof took the following form. We easily established that, unlike in Indiana, in Texas there was historical animosity toward the Black population through all of the official incidents of segregation as well as historical exclusion of Blacks from the electoral process from the early all-white Democratic primaries down through the poll tax. The state urged that these were matters of the past. We responded that the effects lingered, and these actions manifested the hostility that Black-supported candidates were bound to encounter in trying to run for public office in Dallas County.

Through census data, we showed the high levels of poverty, unemployment, and educational limitations that afflicted the Black community. These same data demonstrated the high levels of segregated living patterns in Dallas and the ease with which single-member districts could be drawn that would encompass a Black majority. Weiser's analysis showed a history of cohesiveness in the Black vote—85 percent support for their favored candidates—yet their favored candidates were typically submerged in the countywide electorate by the white vote. This testimony effectively countered the state's argument that all that was required for representation of the Black population was for them to register and vote. Our evidence proved that they could register and vote at 100 percent and still lose. Finally, we demonstrated that the huge size of the district, more than one million people, and the enormous costs of political advertising throughout a district were further barriers to Black electoral success. All this proof was fairly self-evident.

Three additional matters, I believe, assured our success—all starkly different from Indiana. First was the existence of the one-party system in Texas. Indiana was a two-party state, and Blacks were nominated by the Democrats but then simply lost to Republicans in November—traditional two-party politics. In Dallas, the Democratic primary determined electoral success, and Blacks were effectively eliminated in the primary process by a series of factors. Texas law required a candidate to run for a specific place and to receive a majority of the

vote to secure the nomination. The majority-place electoral system, as it is known, is essentially a creature of the old one-party South. It ensured, in the event of multiple candidates, that a mere plurality would not suffice. It enabled the ruling oligarchy to get itself together in the runoff whenever some interloper, populist, or minority candidate managed to garner enough votes to force a runoff. Thus, in the few instances of a minority candidate forcing a runoff in Dallas against a white candidate, the minority candidate was predictably squashed in the second round. Most political scientists recognized that the majority nominating system had been a built-in impediment to minority success at the polls.

Second, this structural lock was much worse in Dallas because of a white conservative Democratic organization known as the Democratic Committee for Responsible Government (DCRG). This organization recruited, screened, financed, and endorsed candidates for the legislature in the Democratic primary and essentially dominated the Dallas political scene. We showed, through testimony of Black leaders, that they were excluded from the decision-making processes of the DCRG and that the interests of the Black community were not taken into account in the slate-making process of the organization. Perhaps most telling, we were able to show that racist campaign tactics were used by the DCRG when their candidates were pressed by minority-favored candidates, thus giving the lie to any notion that this group embraced the minority community.

Third, we offered proof that the Dallas County legislative delegation was not only unresponsive to minority needs but had been in the forefront of support for the segregationist legislation of the late 1950s. In effect, we showed that not only did the system foreclose Black electoral success, it left Black citizens to be represented by a largely hostile or indifferent legislative delegation that felt no need to be responsive to interests of the Black community.

Of course, a central element of proof in establishing the unconstitutionality of an at-large electoral system is polarization at the polls. By this we mean that white voters vote overwhelmingly for white candidates, and Blacks comparably support Black candidates. If, in fact, white voters are receptive to minority candidates, then the fact that the district may be largely white has no adverse effect on minority voting interests because, presumably, qualified minority candidates can find ample support in the nonminority community. This was a practical inquiry, and Dan Weiser's testimony and exhibits of previous election returns showed conclusively that in Dallas in 1971 the white electorate was intensely adverse to Black candidates and to candidates who favored minority interests. Indeed, the *Dallas Morning News* was still editorializing against Ralph Yarborough, because "he has the support of NAACP rank and file," which sounded a lot like a straightforward attack on a candidate because he enjoyed support of the minority community. A last element of proof was to show that it was feasible to draw reasonable single-member districts in which minority-supported candidates could have a legitimate chance of electoral success. This addressed, again, a practical inquiry, for why draw the districts if they are not going to have any impact? In segregated Dallas, it was easy for Dan Weiser to develop districts that contained a majority Black population. In retrospect, the state attorneys were probably harder pressed than we, for they had no more time to prepare and were forced to answer our evidence with little time for reflection. To me, their proof was relatively lame, a sort of plantation defense along the lines of "We love and understand our

darkies" and there is no reason to disturb the historical system. The state made two blunders, falling probably on Jaworski's doorstep, since he was their lead counsel. The first came at the conclusion of the case when Jaworski announced that his only argument would be that the case should be dismissed for lack of jurisdiction, that is, that the court had no authority to disturb the status quo. It is something of a tactical error to tell three federal judges, who have sat through three days of testimony and waded through mountains of documents, that they lack power to act.

The much more substantial error by the defense was its failure to offer any alternative redistricting plan to the court in the event the at-large system failed. I suppose the state lawyers felt it would dignify our claims if they offered their own proposal. The result was that the only single-member-district plans before the court were Dan Weiser's for Dallas and MALDEF'S for San Antonio, drawn by George Korbel. Our Dallas plan, ultimately adopted by the court, drew three Black districts and a sprinkling of white liberal districts. I remember Dan pointing out to me a central East Dallas district and telling me that this district could elect someone like Jim Mattox, who was then a young liberal Democratic precinct chair in Dallas. Dan's prediction on that occasion, as they were so often, proved absolutely correct. One abiding irony of our plan was an elongated district stretching from near Love Field to South Dallas. It was drawn in order to elect Reverend Zan Holmes, who, to our great dismay, retired from the legislature immediately thereafter. This long ribbon district still survives, having been incorporated in both the 1980 and 1990 redistricting plans, and it looks like an abomination.

On January 28, 1972, three weeks after trial concluded, the court issued a hundred-page opinion upholding the bulk of our claims. The court held that "compelling constitutional infirmities have presented themselves in Dallas and Bexar Counties, founded in the context of racial inequalities and hindrances." The opinion, jointly authored by Irving Goldberg and Wayne Justice, tracked in large measure our evidentiary theories on the evils of at-large districts. For tactical reasons, we had included a claim that the plan had too great a population deviation. Somewhat to our surprise, the court bought that argument but granted the legislature a year's grace period to address the issue. Most importantly for us, they invalidated the at-large districts in Dallas and Bexar and ordered the upcoming 1972 primary elections in those counties to be held under plans that tracked our proposals. The court rejected the attacks on the senate plans, but that didn't detract from our joy. We felt we had truly knocked a gaping hole in the power structure's edifice. We were bolstered in our glee by a *Dallas Morning News* political writer characterizing the effect of the victory as "the biggest political upheaval in Texas since Reconstruction," a bit of hyperbole, but we'll claim it.

The state appealed immediately to the Supreme Court and urged that the trial court order be suspended pending appeal. Any such stay would have been devastating, as it would have reverted the 1972 elections back to the countywide system. Justice Powell denied the stay after polling the full Supreme Court. In truth, denial of stay was the final blow to the state's position. Loss of the stay meant that eighteen legislators from Dallas and eleven from San Antonio were going to be elected from individual districts and would be sitting in the next session of the legislature. Even if we had ultimately lost the case on appeal before the Supreme Court, it would have been a virtual impossibility for the legislature to unscramble the egg and

restore at-large elections over the opposition of these new legislators. The 1972 legislative elections did everything that conservative Democrats had feared: the single-member district delegations from San Antonio, Dallas, and Houston produced an enormous increase in minority members, as well as Republicans and Independent liberals. Suddenly a third of the legislature was no longer under the total control of the old establishment. The Black delegation from Dallas consisted of Sam Hudson, Paul Ragsdale, and Eddie Bernice Johnson, who now sits in Congress from Dallas.

One of the individual districts in San Antonio elected G.J. Sutton, a venerable leader of the Black community. G.J.'s fascinating family included Percy Sutton, then one of the powerhouses of New York City politics. G.J. brought to the legislature a lifetime of struggle for Black rights; his election alone would have made the effort worthwhile.

One tale coming out of this turnover concerns three of the Harris County crowd: Mickey Leland, Craig Washington, and Ben Reyes. All newly elected, they arrived in Austin for the opening of the 1973 legislative session driving an old beat-up Chevy, Mickey in his Afro, Craig in his dashiki, and Ben in his work clothes. They circled the capitol grounds looking for a parking space and were confronted by one of the legion of capitol retainers whose role it is to protect the legislators' parking spaces. He stopped their car and asked, "What you boys want?" They explained they were looking for a parking spot. The guard dutifully advised that parking was reserved for members of the Texas legislature. Craig responded, "Well, boss, we'uns is members of the Texas legislature," heralding the beginning of a new era in Texas.

By the time the appeal was argued in the Supreme Court, the elections had been held. Among other things, we were able to point out the efficacy of the single-member districts to what seemed a generally sympathetic Court. The case was closely watched by the voting rights community, because other cases were waiting in the wings all over the South. A unanimous Court, without much discussion, affirmed the single-member-district portion of the trial court order—for us the heart of the case. It reversed the trial court on the other issue of population discrepancies between districts. At the time, I was puzzled by the Supreme Court's approach. Why did the Court write so little about the core issue of voter dilution and seemingly become distracted by a subsidiary question of population deviation? Later events gave me at least a clue and perhaps some insight into the workings of the Supreme Court.

Within short order, single-member-district lawsuits proliferated, all based on the reasoning of Judges Goldberg and Justice in their *Regester* opinion. Soon the Fifth Circuit Court of Appeals, which covered the entire southern United States, incorporated the factors that we had developed in the Dallas case into a decision that applied everywhere in the South. Within a matter of months, single-member-district elections were being put in place in many locales.

Meanwhile, back in Texas, we began the second phase of *Regester*. At-large legislative districts remained in the state's other urban counties—Tarrant, Travis, El Paso, Jefferson, Galveston, McLennan, Nueces, and Hidalgo. In late 1973, we began trial as to these counties before the same three-judge court. It seemed like duck soup. We had the formula; all we needed to do was come up with some evidence for these counties that paralleled our Dallas and Bexar Counties proof from the earlier round. Don Gladden took care of Tarrant County; George Korbel took over the MALDEF role in Nueces and El Paso Counties; and I took on Travis, Galveston, Jefferson, and McLennan. Don was

a former legislator from Fort Worth and a fulltime liberal activist who had spent his entire career in an attack mode on conservative shibboleths. George had wandered into Texas from Minnesota on a VISTA project with MALDEF, and had stayed to bedevil electoral systems in every nook and cranny of the state. (In a later chapter, I devote considerable space to George and his attainments.)

This round seemed like a total replay. For some reason, we got trapped in the same damnable time frame: we went to trial late in the year, and the court again had to roll back filing deadlines. By now, John Hill was attorney general, and he was much less a tool of the lobby than his predecessor Crawford Martin. As a result, the trial preparation was not as contentious as before. At trial, we offered proof that tracked our earlier experiences in Dallas and San Antonio, and the court reached the same result, invalidating the at-large election schemes under the *Regester* vote-dilution principles. The state had learned its lesson, though, and this time offered plans of its own for each of the affected counties. As a result, issues concerning plan drawing occupied a great amount of time, with each local legislator having his or her own notion about proper configuration of individual districts, particularly as it might affect their reelection. Ultimately, the bulk of these issues were settled, and most of the plans ordered by the court were the product of compromise. We now had in place individual legislative districts for every urban county in Texas, and the 1974 elections were to be held in these new districts.

I had been through a bruising battle in Travis County with student activists who were insisting upon a student district among the four Travis legislative districts. To draw such a district, in my mind and in the minds of Black political leaders, would have jeopardized our ability to create a Black legislative district. I bluntly told the student political contingent that although they might think themselves the "new Niggers," their history did not qualify them for such a role. Once that unpleasant fight was behind us, we had created legislative districts for Travis that were going to assure, for the first time, a Black and a Hispanic member in the Travis County delegation.

I was basking in the glory of that moment when the bomb hit. The state had appealed the trial court order and made what seemed to me a perfunctory application for a stay of the trial court order. The stay was directed to Justice Powell, as it had been before. I filed affidavits in opposition that mimicked our successful opposition of two years earlier and assumed that this was a no-sweat deal. At the eleventh hour, Powell granted the stay, leaving in place the at-large elections. I was utterly devastated, as were a number of political aspirants. To my mind, nothing had changed in the two years since our last round, and we had a unanimous Supreme Court opinion approving the trial court's reasoning from the earlier appeal. I finally ascribed the loss to the vagaries of litigation and, as one must in this business, went about my life as best I could.

The appeal came up for argument before the Supreme Court in late 1974; I divided the argument with Don Gladden. In the interim since the stay, my hubris had returned. After all, this was simply the boilerplate of the first *Regester* case. We had the same legal and factual theory that the Court had unanimously affirmed two years earlier. Shortly into the argument, I had the overwhelming feeling that something was badly amiss. Hostile questions began to flow my way. When I pointed out that the theory was identical to their earlier *Regester* opinion, I got what seemed to be blank stares of disbelief from the Court, even from Justice White, who had written the original *Regester* opinion. I left the courtroom that day convinced that we were headed for

disaster when the Court finally ruled. In trying to describe this experience, the best I can do is this. Assume you are an eager third grader, the teacher asks you to multiply 7 times 7 and you respond 49, and you are rewarded with high praise. Two days later the same question is asked, you throw up your hand and supply the same answer, and this time the teacher chastises you for your stupidity. This is how I felt as I left the Court that day.

Fortunately, the Texas legislature had become convinced that we were unbeatable. While we awaited the Supreme Court, the Texas legislature created single-member districts in all of the counties at issue, in most instances mirroring our districts. The Texas war was won, but an unfavorable Supreme Court decision would jeopardize voting rights cases everywhere. I began to frantically exchange telegrams with the clerk of the Supreme Court, advising that as soon as the governor signed the bill, the appeal would be moot. If we could "moot the case," in lawyer parlance, that would mean the Supreme Court would not issue an opinion, and we could avoid any disaster from that direction. The Supreme Court goes into recess at the end of June, and the clerk repeatedly admonished that he must receive confirmation of mootness before the recess began. The governor signed the reapportionment bill the day before the Court's recess, and the Supreme Court did not issue an opinion, but sent the case back to the trial court to look into the mootness question.

Some years later I had confirmation that my fears were totally justified and a disaster had been narrowly avoided. In 1980, the Supreme Court issued its opinion in *City of Mobile v. Bolden*, holding that one must prove intent to discriminate in order to successfully maintain a constitutional challenge to at-large districting schemes. This proof requirement is almost insurmountable, because often these systems came into being in the South at a time when Blacks were totally excluded from the political process, thus racial exclusion could hardly be the motive. Indeed, in many places in the South, the original targets of at-large elections were the populists, not excluded racial minorities. The question of improper intent was obviously nagging at the Court during my second oral argument, for we had little evidence of unlawful intent to bolster our claim. In fact, the original *Regester* case had been won on essentially an "effect" test. In trying to reconcile their *Bolden* case with the earlier *Regester* opinion, the Supreme Court characterized *Regester* as an unlawful-purpose case, smacking somewhat of judicial legerdemain.

There are several possible explanations for the Supreme Court allowing us to skate around the "intent" question the first time, none of them particularly satisfactory. Surely the Court didn't miss the intent issue; it was always lurking as a problem. It may have been that the facts of our case were sufficiently outrageous that the Supreme Court didn't want to disturb a just result, particularly when elections had already been held. It may also have been that the Court didn't anticipate how many cases *Regester* would spawn and how widespread would be its impact on existing political structures. Possibly, once the full implications became clear, a majority of the Court decided a scaling back was in order. One thing was clear: Given his about-face on the stay question, Justice Powell had decided he was ready to slow things down. Litigation is a perilous process, and there are no sure things, but this experience was a true eye-opener. By securing the mootness ruling, we were able to preserve *Regester* for another half-dozen years. The consequences are evident everywhere in changed electoral systems put in place during those years.

All is well that ends well. Congress and the civil rights community were so outraged by the *Bolden* decision, and so persuaded of the rightness of the *Regester* result, that the Voting Rights Act was amended in 1982 to effectively reverse *Bolden* and restore *Regester* as the governing statutory principle. The legislative history of the amendments reflects a congressional determination to resurrect the tests developed by the trial court in *Regester* and write those standards permanently into U.S. election laws.

Before the decision in *Regester*, there were virtually no Black officeholders in Texas. Indeed, none had been nominated by either the Democratic or Republican Parties for any office of any kind in the state during the entire twentieth century until the elections of 1966, when Barbara Jordan and two other Blacks went to the legislature. The plight of Hispanics in Texas had been almost as severe. This pattern was replicated everywhere in the southern United States. In those years, nearly all electoral systems contemplated at-large elections. Today, certainly in Texas, there are hundreds of minority elected officials, most of them the product of conversion to single-member election systems. By any measure, *Regester* worked dramatic changes in minority access to the political process throughout Texas and the rest of the South.

11
Life and Times with U.S. District Judge Jack Roberts

THE WHEELS ALMOST CAME OFF the wagon in Austin during early May of 1970. Nixon had taken office in 1968 with a promise to bring an end to the Vietnam War, and this promise had stilled the antiwar activity somewhat. The expansion of the war into Cambodia in the spring of 1970 revived the movement, and the National Guard killings of antiwar protesters at Kent State in May brought emotions back to a fever pitch. Austin at that moment was already boiling over on a related local issue, the repeated refusal of the Austin City Council to allow the Student Mobilization Committee to hold an antiwar march on the city streets.

In the spring of 1970, the Austin City Council was composed of seven white businessmen, reflective of the political sentiments that dominated the state in that era. The council had rejected applications for peace marches in December and again in April 1970. In April, 5,000 demonstrators marched on the city sidewalks under the watchful eyes of Austin police. Kent State added an explosive element. On Tuesday, May 5, an antiwar rally on the UT campus refused to be confined to the campus as marchers swung into the Austin streets and through the capitol grounds. The march was finally dispersed by Austin police with tear gas, as they blocked the marchers at Eleventh and Congress. A dozen injuries were reported, including six policemen. Among those arrested was law student Steve Russell, known to later generations as Judge Russell, as he served for a number of years on the Travis County bench. One marcher given public credit for helping to prevent more significant violence was law student Jeff Friedman, who later became the mayor of Austin after the political revolution hit the capital city.

Next-day headlines in the *Austin American-Statesman* shouted "Riot in Austin" and, more accurately, "Tensions Run High in Austin." The Student Mobilization Committee called for shutting down the university and condemned the tear-gas attacks on peaceful marchers. The campus community was in an uproar. On Thursday, a renewed parade application was presented to the city council. The UT general faculty met in emergency session and by a vote of 700 to 1 agreed to support the parade application, a remarkable show of unity among a diverse faculty. The Austin City Council, steadfastly ignoring reality, held its ground and once again refused. Campus activists expressed a determination to defy the council and march. Law enforcement officials, in their typically stubborn mind-set, were equally determined to prevent any such challenge to the established order. Chief Bob Miles of the Austin police announced he would deploy 150 Austin police, along with 300 state police and 20 of the vaunted Texas Rangers, to ensure that no one marched in the streets of Austin. Miles planned to "arrest every one of them we can get our hands on." Remember, this was the age of confrontation, and students had just been gunned down at Kent State. The march was scheduled to begin at 10 o'clock in the morning on Friday, May 8. Plenty of red hots would be in the crowd, and

no one thought the march could be confined to the sidewalks; violent confrontation seemed inevitable.

George Schatzki called me at home Thursday night to say that some UT law students—current Austin lawyers Tommy Jacks and Hugh Lowe among them—had drafted an application for an emergency injunction to require the city to permit the march to go forward on the city streets. George wanted me to sign the pleadings and join him in presenting the application to Federal Judge Jack Roberts the next morning. This was a perfect invitation. I didn't have to do any work, just show up and, if we won, be a hero. When we arrived at the federal court the next morning, the place was awash with people, press, cops, and student leaders on walkie talkies. Everyone's report was the same: thousands were massing on campus, determined to march, if necessary, in defiance of the city officials. It was a moment mixed with exhilaration and fear of failure, for obviously our legal arguments were pretty threadbare.

The march was due to begin at ten o'clock, and it seems to me that Judge Roberts did not take the bench until almost that time. I suspect he was obtaining updated reports on what was taking place at the campus. Very brief remarks were made by George in support of the right to parade, and by the city attorney in opposition. Judge Roberts was much inclined to scowl and mumble. When the lawyers sat down, he muttered a few words that none of us understood. I nudged George and told him to get up and ask the court for a clarification. The judge grumbled, "I said they could march." What a triumphant moment. By the time we got out of the courtroom, the word had been relayed to the march scene, the gestapo were being withdrawn, and the march was beginning down Guadalupe at Twenty-fourth. I was able to run back to my office in the old AFL-CIO building, dump my bag and tie, and catch the march as it reached Guadalupe and Eleventh. The marchers filled the street as far as one could see; their numbers ranged upward of 20,000.

Judge Roberts's order literally worked a transformation. The march was a peaceful and joyful occasion. The Austin police suddenly became friendly in the eyes of the dissidents, and I suppose the dissidents came to appear more like ordinary young people to the police. The *Austin American-Statesman* accurately described the scenario: "What began as a potentially explosive march against U.S. involvement in Vietnam ended peacefully—almost gaily—as a protest parade with the blessing of the federal government." Most of us associated with the movement of that era felt that violence was inevitable if the marchers had not been permitted into the streets. Assuredly, that fear was uppermost in Judge Roberts's mind. In his reminiscences of fifty years as a lawyer, reported in the *Texas Bar Journal*, he alluded to his Austin march ruling as one of his most rewarding moments. He was a humane and pragmatic jurist.

Judge Roberts stories abound among those of us practicing civil rights law in that era. On the surface, he seemed such an unlikely ally, but he proved to us time and again how deceiving appearances can be.

I had not thought to write further about Jack Roberts, but the more I dwell on those times, the larger he looms. There was certainly nothing in his background or in his demeanor that would suggest he would be on our side. Judge Roberts had been the district attorney of Travis County and later a state district judge in Austin. I am aware of nothing in those years that would have differentiated him from the politicians of that time. Indeed, Maury Maverick Jr. tells a story that suggests that Roberts came from the same old world. In the

midfifties, Maury filed suit on behalf of a Black prizefighter, Sporty Harvey, attacking the Texas law that forbade racially mixed prizefights. The law made it a crime for a Black and a white to fight one another in the ring, a statute that seemed palpably unconstitutional. Maury took his case before Judge Roberts on the state bench and lost, Judge Roberts upholding the state law. Maury recounts that some years later, after Roberts became a federal judge, he ran in to the judge in the courthouse and the judge hailed him and said, "Maury, I want to tell you something. If I had been a federal judge back then, I would have held for that nigger fighter of yours."

I tell this story not to denigrate Judge Roberts, for whom I have great respect and affection, but because it seems to me to be part of the piece. Maury tells the story as a means of arguing for the appointment of judges, thereby freeing judges from the vicissitudes of politics. I think it tells us something about the nature of the electorate of that era and about how far we have come.

It seems to me that for the decade of the 1970s I had one or more controversial matters before Judge Roberts at all times. Obviously, I did not win all of them, but he was consistently willing to do those things that seemed right. On reflection, one of his most cutting-edge rulings was in the case of *Schattman v. Texas Employment Commission*. This case raised—almost for the first time in the country—the issue of forced maternity leaves and whether such policies violated either the Constitution or the sex discrimination provisions of the Civil Rights Act. In 1970, employers routinely imposed mandatory maternity leaves on pregnant employees, forcing them to take leaves of absence, usually after the sixth month of pregnancy. Some policies forced pregnant employees off the job even earlier. Such leaves were typically unpaid and visited real financial hardship on the pregnant individuals and their families. Pregnant workers were not even assured that they could return to their old jobs after giving birth. Yet these policies were totally ingrained in U.S. employment practices. I confess, when Mary Ellen Schattman first came to me with the problem, I reacted as a conventional male of the era and professed to see no great injustice, given what I misperceived to be the physical limitations imposed by pregnancy. Mary Ellen was persuasive, as were the facts. She was employed as a labor market analyst with the Texas Employment Commission, her doctor thought it appropriate for her to continue working, and the income was needed because her husband was a law student. Nonetheless, she had been fired at the end of her seventh month of pregnancy.

The trial presented no factual dispute. The state agency readily admitted that my client had been discharged in keeping with a longstanding and, to their mind, totally justified maternity policy. The central conflict came from the medical testimony. We offered as a witness Mary Ellen's obstetrician, who testified that, in his opinion, "a woman can go down there and work in the office up until the very date the baby is delivered," and that he felt his opinion "would be the majority opinion of all obstetricians." The defendant conceded on cross-examination that the decision to terminate my client "did not take into account either what her doctor may have thought was possible or what her job requirements were." The state called a local obstetrician, Dr. Morris D. McCauley, who testified to the opinion that women in the third trimester of pregnancy "are a constant problem in all phases of their work" and "they are not only hard to live with but they are hard to employ" and "are frequently running to the bathroom." This testimony by Dr. McCauley did not go unnoticed. Our trial was being covered for the *Austin American-Statesman* by a

young woman, who was herself about seven months pregnant. She reported in detail the medical testimony, and for three days thereafter, angry women picketed Dr. McCauley's office. Typical of Judge Roberts, he was fully aware of the reporter's presence. The reporter, my longtime friend Sarah Speights, was called into the judge's office at a break and admonished with a twinkle, "Young lady, don't think I don't know what you are doing sitting there on the front row. I want you to know that if you have that baby in the courtroom during this trial, I'm going to hold you in contempt." Judge Roberts found for us, holding the policy void because "there was not such an impairment of efficiency, if any, to justify TEC's outmoded policy." Regrettably, we did not fare as well in the Fifth Circuit. That court reversed in an opinion by Judge Ross Coleman, former governor of Mississippi, who was terribly impressed by Dr. McCauley's view of pregnant women. Three old white men on the Fifth Circuit, all contemporaries of Judge Roberts, could not shed their "outmoded" views on the nature of pregnancy. Nevertheless, in relatively short order, Judge Roberts's view of the law became the prevailing opinion across the country, and mandatory maternity leaves are now a matter of ancient history.

A footnote or two on the Schattmans are justified. Mike and Mary Ellen Schattman returned to Fort Worth after law school. Mike became a state district judge and served for a number of years, until he was nominated by President Clinton to a U.S. District Court judgeship. Mike literally became the poster boy for federal judge nominees blocked by the Republican Senate during the Clinton presidency. The nomination languished for years because of the unexplicated objections of Senator Gramm. Mike finally gave up, a victim of the hostile partisanship that so dominated the Clinton years. The Schattman son whose birth cost Mary Ellen her state job was a classmate of my son Dan at UT Law School, assuring, I hope, another generation of scrappers.

My last sex discrimination case before Judge Roberts was even more preposterous than the Schattman nonsense. The University Interscholastic League (UIL) governs all intramural activities of Texas high schools and all sports programs. Unbelievably, until well into the 1970s that organization refused to permit high school girls to play full-court basketball and required that they play the half-court game. A lawyer from Burnet, Texas, came to me to challenge the UIL rule. He had a high-school-age daughter who loved basketball and was going to be foreclosed from playing basketball in college if she was confined to the half-court game throughout her high school career. I filed suit before Judge Roberts to void the rule and authorize full-court basketball for girls. The UIL promptly capitulated, rather than try to justify to Roberts their prohibition against full-court basketball. One facet of Judge Roberts was a lack of patience with bullshit, and lawyers very quickly found their chairs when he began to grimace and growl. None of the lawyers for the UIL was willing to face the mortification of arguing that girls were physically incapable of running the full length of a basketball court. Yet if we had not sued, the UIL would undoubtedly have continued its prohibition against full-court basketball, for reasons of inertia if nothing else.

After we won the *Regester* single-member-district case—a case that held that at-large elections of members of the Texas legislature violated constitutional rights of minority voters—we began to take voting rights matters before Judge Roberts. The first was an attack on the at-large electoral system for my old hometown of Waco. To their credit, the League of Women Voters of Waco hired me to challenge the system. My mother had been the first president

of the Waco League, so it seemed only too fitting. The Waco history was not unusual in those times. In its early years, Waco, as most Texas cities, had elected its city council from separate wards. After World War II, a young Black man had come back from the war with uppity notions and filed for election to the Waco City Council from the east Waco ward, where all the Blacks were concentrated. He did not win the election, but the fact of his candidacy sent a tremor through the city fathers. The first order of business after the election was to amend the city charter to provide that future elections would be citywide. Under the new voting scheme, a candidate must reside within the ward to represent it, but he or she would be elected by the entire city electorate. This gave the majority white community an effective veto over the council member from the east Waco ward. In recent years, that had resulted in the election of a Black member to the Waco council, a fairly progressive notion for the time. But the Black councilman had not been the choice of the Black community; rather, he had beaten a Black opponent favored in the minority community by securing overwhelming support in the white Waco precincts. Essentially, white Waco reserved control over who could speak for Black Waco. I filed suit to challenge the system and require election by the voters in the district. The city hired a big-time Houston law firm to protect their existing system, but Judge Roberts made short shrift of the Houston lawyer. At our first preliminary hearing, the lawyer began his presentation on some point or another about why the current system was lawful. About two sentences deep, just as he was getting warmed up, Roberts cut him off: "Why, isn't this case just like Mr. Richards's *Regester* case?" As the lawyer began to stammer his response, Judge Roberts stopped him again, "I think you better sit down with the plaintiffs and work out an election plan that will satisfy them." The lawsuit was over without firing a shot. The city capitulated, and all we fussed about was the drawing of the single-member-district lines. It is great when it goes your way, not so great when it doesn't. The end result for Waco was legitimate council seats that produced both Black and Hispanic council members, and the city didn't seem to suffer the slightest from the change.

Judge Roberts and his secretary, Patsy Schleuter, ran an operation that required a minimum of judicial exertion. At that time, Roberts was the only sitting federal judge in Travis County, and the volume of filings before him was enormous. George Korbel, an ally from that era, recounts a tale that demonstrates the workings of the system. George had won a voting rights matter in the court, and the only remaining issue was attorney fees. He got a call from Judge Roberts: "George, what do you think you need in the way of attorney fees to get this over with?" George responded with a modest figure, and Judge Roberts replied that he wanted to be sure that George was fairly compensated and named a higher figure and asked if that would be sufficient. George agreed that it would be satisfactory, and the judge hung up. Ten minutes later, George got a phone call from opposing counsel offering to settle the fee issue for the amount named by the court. No one had to break a sweat, and everyone went away happy.

Patsy, the judge's secretary, was equally legendary. Not a leaf fell around the federal court that Patsy didn't note. She probably settled almost as many cases as Judge Roberts. I got hired by a young man who was being kicked out of college up in Killeen. He was a paraplegic veteran who was attending school on veterans benefits, living in the dormitory. His girlfriend had gone to his room to assist him with his neck brace, and the school authorities learned of it.

He was booted out of the college for violating school policies that prohibited women from being in men's rooms. I prepared injunction pleadings and filed them in the federal court in Austin. Within an hour, I got a call from Patsy, who always read everything that was filed. She asked whether this was serious, and I said yes, the lunatics were expelling him. She said she wasn't going to bother the judge with this one, she would call the head of that institution herself. Before the day was out, I had a call back from Patsy to tell me the matter was resolved and my client was readmitted. I am not certain of her technique, but I believe it went something like this: "This is Judge Roberts's office calling, let me speak to President . . . or Colonel . . ." Then, "We have this suit that has been filed against you, and I am trying to save you a lot of trouble and expense . . . ," etc. Before you knew it, her persuasive techniques worked, and the judge did not even have to be troubled. I had the experience enough to know this is about the way the deal went down—most efficient justice.

Vietnam produced enormous tensions throughout society, and nowhere was it more evident than among those facing draft or shipment to Vietnam. There were damn few escape routes. Some young people simply jumped ship and fled to foreign countries to escape the draft, others spent enormous energy dreaming up or fostering ailments that might let them fail the physical. Dental work was a favorite, as the military was loathe to take on the costs of extensive dental bills. The most difficult legal route was conscientious objection. The entire system—the military, the draft boards, and the courts—was hostile to that claim. Remember that Cassius Clay, a.k.a. Muhammad Ali, was denied C.O. status and later convicted for failure to report to the draft. During the late sixties and early seventies, there was intense pressure to enforce the draft and block any exits. A few lawyers around Texas got into draft work, and Maury Maverick Jr. in San Antonio was the most prominent. Jim Simons, Cam Cunningham, and I did a fair amount in the Austin area and elsewhere. Remarkably, Judge Roberts became the most responsive of all the sitting federal judges in Texas to C.O. claims, probably one of the most receptive in the nation. I won a number of what were called "late crystallization" cases. The soldier at Fort Hood receives orders for Vietnam and suddenly begins to realize that he holds a deeply fixed conscientious objection to war making. The military was required to examine the claim, which the Army typically did in a most perfunctory fashion, then denied the claim, and cut his orders for Nam. Our only recourse was to seek an injunction against shipping him overseas until the federal court had a chance to review the basis of the C.O. claim. Most federal judges simply denied the injunction at the outset, and the client ended up overseas and the case fell apart. Not Judge Roberts. In many instances he stopped the military in their tracks and ultimately ordered release of the soldier from the military. Here he was, in the heart of LBJ territory, where the emphasis on support of the "war effort" was everywhere, quietly honoring claims of conscientious objection that were being routinely rejected by federal courts all across the country. All of this was done without fanfare. He clearly preferred to avoid the spotlight. Judge Roberts was simply one of those judges who quietly and consistently sought to civilize the world within his reach.

12
The Texas Department of Public Safety Gets Caught Snooping on "Radicals" at the Unitarian Church of Dallas

PARANOIA RAGED among the left during the 1960s and 1970s; government snoopers were thought to be everywhere. The fact is, they were everywhere at the federal, state, and local level. The law enforcement world was determined to watch and hassle people on the left. Stoney Burns and the *Dallas Notes* is a graphic example, but there were plenty of others. Reading the Nixon tapes reflects that the obsession began at the White House, and it permeated law enforcement of the era.

I remember a touching moment in the seventies, when I spoke in Austin along with other activists at an "Impeach Nixon" rally on the state capitol grounds. I don't remember why I was on the program, but it was a goodly crowd, heavily sprinkled with conspicuous undercover types. After the rally, I was leaving the capitol with my daughter Ellen, who was eight or nine at the time. We were holding hands on a lovely spring afternoon when suddenly a fat Austin cop jumped out of his "unit" and began to take our picture. Ellen had the wonderful child's response that our pictures were being taken as minor celebrities. I didn't bother to explain that she was probably making her initial entry into the Austin P.D. intelligence files.

One of the intelligence practices was to accumulate copies of all the underground publications across the country. A group had as its sole duty to read, clip, and file items from the underground press. Much of the writing was utter gibberish, fueled, I suspect, by hallucinogens. It was great solace to think of those hardy souls dutifully poring through the week's accumulation of new-left writings. William Cowper Brann, the great polemicist who published *The Iconoclast* in Waco around the turn of the century, once likened the reading of the *Dallas Morning News* editorial page to the labors of Hercules. Reading the underground press seems to fall in the same category.

In 1974 there was a young Continental Airlines pilot in Dallas by the name of Bob Pomeroy. He came to the attention of the Department of Public Safety (DPS) "intelligence" minions as a vocal opponent of nuclear power. The ensuing *Pomeroy* lawsuit provided one of those rare instances in which we obtained the full text of an internal DPS "intelligence" report. Normally, officialdom simply denied such reports existed and left the lawyer helpless to prove otherwise. In simplest terms, no court is going to order production of documents that don't exist, and there was little candor among law enforcement types about the extent of their surveillance activities. Even if you were lucky enough to get a court order to produce any records concerning your client, the report would be so heavily edited as to be virtually incomprehensible. In Pomeroy's case, the DPS "intelligence" agent thought his report so significant that he furnished it to Pomeroy's employer. To Continental Airlines' credit, they provided Pomeroy the report, and there was the full-blown proof of the

snooping.

The report in its own language is much more damning than anything I could ever write. For those not previously exposed to law enforcement idiom, it should be a revelation:

> CHARACTER OF INTELLIGENCE
> ( ) ___ Criminal Source: Confidential Informants DD-19 and DD-17 and Investigation ( ) O.C. (x) Subversive
> ( ) Racial Source Evaluation: (A) ( ) Other Attention to: Agent in Charge Intelligence Service Report Written by: David A. Dimick #2449
> The subject is involved in forming an Anti-Atomic Power Plant project called C.A.S.E. that stands for CITIZENS ASSOCIATION FOR SOUND ENERGY. The subject lives at 3108 Brookhaven Club, Farmers Branch, Texas, with his wife . . . and his son . . . , date of birth 4-10-64. The subject is a flyer for Continental Airlines and is based at Dallas-Fort Worth Airport. . . . In 1955 the subject enrolled at Cortland State University, Cortland, New York, where he remained until he received a Bachelor of Science Degree in Health Education in 1959. The subject's major interests in college were the baseball team, band and a local fraternity. On 6-17-60 the subject entered the United States Marine Corps . . . and is alleged to have been stationed in Washington D.C. and Pensacola, Florida. In September 1966 the subject resigned his commission in the Marines to go with Continental Airlines. . . .While in the military the subject used BUD WINIG, a restaurant owner in . . . New York, and ISADORE MARKOWITZ, a gas station owner in . . . New York, as character references. The subject attained the rank of Captain while in the Marines and was assigned as an instructor at the naval air station in Pensacola, Florida at his termination . . .
>
> The subject first came to the attention of this service on 1-14-74 when he spoke at length at the Dallas City Council in an attempt to block the building of a Nuclear Power station in Glen Rose, Texas by the Texas Utilities Company. The subject alleged that he had formed a group that would file suits and attempt to stop the building of a Nuclear Power Station. The subject stated that his group was small at this time (approximately 40 members) but had the backing of 45 other supporters. The subject read to the City Council, and distributed to the media, 2 telegrams from alleged experts in Atomic Physics, Professor David R. Inglis of the University of Massachusetts and Professor Henry W. Kendall of the Massachusetts Institute of Technology. Both telegrams used scare tactics in the way of vague studies and future predictions . . . Professor Inglis has been cited [by] the house committee on un-American activities [in] its report entitled "A staff study—the Pugwash Conference" dated 1961 in reference to possible communist infiltration into Anti-Nuclear Energy front groups.
>
> Before leaving the City Council Meeting the subject was observed talking to CARL BRANNIN, a white male, approximately 70 years of age, who has been a longtime socialist party organizer in Dallas, Texas.
>
> Recently the subject challenged Mr. WILLIAM "BILL" ASTON, the Vice President in charge of advertising at Dallas Power and Light Company, a subsidiary of Texas Utilities Company, to a debate on Atomic Power. The debate will be held on 3-10-73 at the Unitarian Church, in North Dallas, Texas. The Unitarian Church has in the past been the sponsor of such radical left groups as the Dallas Peace Committee, the UNITED FARM WORKERS, GAY LIBERATION, and was the host of a "Social" workshop in January, 1974 where all major subversive groups in the North Texas area set up information booths.
>
> Informants feel that the subject is using CITIZENS ASSOCIATION FOR SOUND ENERGY as a front group, possibly for a RALPH NADER action.

The categories under which information was logged are noteworthy: "Gen. Criminal, Organized Crime (O.C.), Subversive, Racial, Other." These categories were typical of all local police departments across the state. Be assured that the racial category was directed at civil rights activists.

Dimick's deposition revealed that he was a graduate of the intelligence training program of the DPS. When he characterized as "radical left groups" the

Dallas Peace Committee, the United Farmworkers, and Gay Liberation, Dimick was echoing the views of law enforcement in Texas. Obtaining the report provided the first real opportunity to expose the idiotic endeavors of these agencies. Undoubtedly, much of Texas would have agreed with Dimick's characterizations. Nonetheless, the DPS would have preferred to have maintained its little secrets.

Suit sponsored by the Dallas Civil Liberties Union was filed against the DPS and Dimick in federal court in Austin. A fine young lawyer from Dallas, John Jordan, joined me in pressing the case. Austin was chosen because we felt that Judge Roberts was more likely to force Dimick to disclose his so-called confidential informants. Carl Brannin was also joined as a plaintiff to supply a nice historical element. Carl by that time was in his mideighties and had been in the forefront of anti-establishment activities his entire life. Mind you, this lawsuit was more about exposure than anything else. It was not easy to urge with a straight face that Carl had been injured by being labeled a "longtime socialist organizer," given the fact that he had been the Socialist candidate for governor of Texas in 1936. As Carl remembered it in his deposition, he got 800 votes for governor and Norman Thomas got 1,000 votes for president. In Carl's words, "It was a token candidacy, educational you might say"—but still an effort of which he remained proud, as his deposition displayed.

Q: Was being a member of the Socialist Party and active in the Socialist Party something of which you were ashamed at the time?

A: I should say not.

Q: Have you ever tried to hide that fact?

A: Never did, no.

Carl's objections to the Dimick report made perfect sense:

Q: . . . Aside from the fact that your name is misspelled and your age is misstated, is there anything about that that is terribly inaccurate?

A: Well, it is inaccurate to say that I am a longtime organizer. You see, after the Socialist Party ceased to put up candidates on the national field, I registered as a Democrat and as an independent Democrat. Sometimes there was no opportunity to vote for Socialist Party candidates.

He later elaborated:

A: . . . I don't think it's the function of the Department of Public Safety—to go around and spy on people and groups, especially with inadequate information, because Mr. Dimick says somebody told him this and somebody told him that. He didn't say that he saw me or that this—and this other person who is an unknown person. I don't think that's the function of the Department of Public Safety.

Central casting could not have supplied a more attractive plaintiff than Bob Pomeroy. He testified as to the concerns that caused him to appear before the Dallas City Council.

Q: . . . How did you first come to be interested in the subject of the building of nuclear power plants and the potential hazards that might result therefrom, et cetera?

A: . . . I became interested in it because I felt that energy was going to become more of a critical issue than it was at that time, that it was inevitable that we were going to have energy problems; and I thought that nuclear power would play a big role in this so I got some documents from the Atomic Energy Commission, pamphlets describing the plants and describing the method of producing electricity through fission. . . .

They have no program as yet to dispose of very large amounts of highly radioactive material. As a matter of fact, the small amounts that they have—I say "they," the Atomic

Energy Commission—in their Hanford plant in Washington they've leaked over half a million gallons of highly radioactive material in the last 20 years; and they have no program for disposing of this material. I don't believe, and many critics don't, that they've answered the question of low-level radiation and the effect on the population, especially the very old and the very young. The business of transporting these nuclear plants to areas such as Israel and Egypt in spite of what happened in India where India got the material for her nuclear weapon from the Canadian plant, that Canadian nuclear power plant that they had there in India, I think it's very dangerous and I think it might compromise world peace . . . they have weapons grade material in the core; and this is where India got her plutonium for her atomic bomb from that core of that Canadian power plant.

One last thing, I think it's being proved to be economically not feasible.

This testimony, given twenty-five years ago, seems right on the money today, as these concerns continue to dominate.

Pomeroy first learned of the surveillance report from his boss:

Q: . . . How did you first become aware that there had been a report of some sort prepared by the Department of Public Safety or one of its agents on you?

A: About the middle of May I was out at Dallas-Fort Worth's Regional Airport at our operations office. And my boss, Captain McGowan, asked me if I wouldn't step in his office, he wanted to show me something. And I went in his office and he slid the report across the desk for me to see.

The report he was provided did not disclose the author. His reactions were understandable.

A: After May 14th, I didn't know what to think because I felt that somebody obviously thought I was subversive. They said enough about it to give me that impression. I didn't know who it was and I didn't know if I was being watched or that my phone was being tapped. You start hearing noises then. My wife felt that the phone was tapped. We had one incident where there was a car parked on our street and with a person in it. They just sat there for hours adjacent to our house.

After Pomeroy went public about the surveillance, he learned that the DPS was the culprit and that agent Dimick had supplied Continental Airlines with a copy of the report. With ACLU support, suit was filed, and the press had a heyday. The *Dallas Morning News* reported in July that Dimick had "investigated Pomeroy because of his opposition to a proposed nuclear power plant and concern Pomeroy might some day crash a Continental airliner into the plant if it were built near Glen Rose." Such statements gave rise to a fair amount of concern about what the DPS was up to with its intelligence operation.

The *Dallas Morning News* pursued the story energetically for some weeks. Quoting unnamed Texas law officers, the paper reported that the DPS "spied on any labor activities, antiwar demonstrations" and that the First Unitarian Church of Dallas "had been under routine surveillance by DPS agents." The same story reported that a former student at Tyler Junior College had been approached by a DPS agent and asked to collect information on the Tyler Civil Liberties Union and the Tyler Unitarian Church. Suddenly, the cat was truly out of the bag, and the plaintiff lawyers had themselves a grand old time.

Dimick, in his initial depositions, refused to disclose the names of his "confidential" informants and told the *Dallas Times Herald* that he would "go to prison rather than reveal the identity of his sources." An order from Judge Roberts directing him to reveal the names, and the prospect of contempt, brought him around. We got to question him about his secret informants on the condition that we not reveal their true identities. They proved to be a pretty sad pair.

Q: . . . How many confidential informants provided you with information on Bob Pomeroy?

A: Two.

Q: Now, going to J. B., can you tell me first how long you knew (him)?

A: . . . I met him a few months prior to the date of this report. . . . He's around forty to fifty years old. It's hard to tell his age on it, because he changes his hair styles and beards and mustaches.

Q: How did you meet him?

A: . . . I believe that he had a relative in Dallas and he was going to be in Dallas for several months and he had been a professional informant. And he had let the people know that he was working for previously that he was moving to Dallas and they referred him to me. He had been a witness in a previous action and was kind of going undercover for a while. . . .

He was strictly a professional. He would get information and bring it to me or ask me if I needed it. If I said that I did not need it, did not want it, he'd say, "Okay, I'll hear from you later."

Q: Did you pay him for information?

A: Never paid him.

Q: What was his motive in providing you with information, as far as you knew?

A: I think that he—this was just an assumption; we never talked about it too deeply; I knew better than to talk about it with him—that he just felt by having someone that he could go to in case of an emergency, if he had wanted to. . . .

Q: Let me ask you: What is a professional informant; how would you define a professional informant?

A: Probably one that relies heavily during the period of his life—this man was an older man and he had done it for a long period of time. He knew what he was doing, very secretive. I guess to me the connotation is pretty simple, but to explain it, it's very hard. . . .

Q: Do you happen to know what this man did before he became your informant in terms of his making a living?

A: No. I know that he was an informant.

Q: What did he do for a living while he was here; do you know?

A: No. I don't believe he had any gainful employment.

Q: On this particular Pomeroy investigation, did he contact you about Pomeroy?

A: Yes. . . .

He said, "Are you interested in anything with"—I think the way he put it—"people that are involved in the Anti-Nuclear Power thing," and he mentioned that the group that he had heard speaking sounded similar to a group that he had previously worked on and done some information on, and he wanted to know if I was interested in it. And I asked him basically, "Well, what was the other group you worked on?" He described that group. I then said, "Yes, I would be interested in it."

Q: Was this other group a Nuclear Power group?

A: Yes.

Q: I don't guess you could tell us who they were?

A: It was the Georgia Power Project. . . .

Q: Do you know approximately when he called you? . . .

A: It was on, I think, either the day or the day after Mr. Pomeroy spoke to the City Council. . . .

Yes. And he said that he had seen Mr. Brannin and Mr. Pomeroy talking at the meeting discussing something.

Q: Did he tell you about Mr. Brannin?

A: He told me that he had known of Mr. Brannin through, I guess, work that he had done in the past.

Q: What information did he give you on Brannin specifically, information that's in the report there?

A: Yes. He said that he had been a member of the Socialist Party for a number of years.

On our motion, Judge Roberts directed Dimick not only to disclose the names of his informants but also to attempt to locate them for depositions:

Q: . . . Can you tell me first what age is R.C.?

A: Probably twenty-five, twenty-eight, in that area.

Q: Did somebody else tell you that he would be an informant?

A: No. I developed him solely myself.

Q: How did he become involved in the Pomeroy case?

A: He gave the information about the debate that Bob and Bill Aston had at the Unitarian Church.

Q: He approached you?

A: He said, "Did you know this went on?" I said, "No, but I do now."

Q: How come that two of your informants decided to give you information on this subject matter independently of each other?

A: Well, it was really independent. One of them was looking at it from one aspect—more of Anti-Nuclear Energy—and the other one was involved with criminal activity that had ramifications with some people that were involved in the Unitarian Church or that had meetings in the Unitarian Church. And this is how he brought this name up. . . .

Q: In that particular paragraph you have referred to, it says that "the Unitarian Church has in the past been the sponsor of such radical left groups as the Dallas Peace Committee, the United Farm Workers, Gay Liberation, and was the host of a 'Social' workshop in January, 1974, where all major subversive groups in the North Texas area set up information booths." Now, is that information from him?

A: Yes.

Q: Are these all groups that he had information on?

A: He would from time to time provide information on individuals that were connected with these groups.

Q: Were you investigating any of these groups?

A: No. I was investigating some individuals that were in the groups, though.

Q: In the Dallas Peace Committee, United Farm Workers, Gay Liberation?

A: Yes, sir . . .

Q: Do you know what he did for a living during the time he was your informant?

A: Yes, I believe he sold cars or traded cars.

Q: Do you know what his motivation for being an informant was?

A: I think he liked to be around policemen. He liked to see people that did destructive things brought to justice. He thought he could be of a help and service.

Q: When is the last time that you had any contact with Mr. C.?

A: It was shortly after a news article came out that . . . Judge Roberts had ordered me to reveal my informants.

A: He said, "I'm gone. Don't ever try to contact me again."

Q: That's all he said was: I'm not informing anymore; I'm leaving. . . .

A: I'd say this: I think I know where he is on this. I think he's in Mexico. He called me one time from a pay phone and I heard Mexican language on it. I heard him speaking Mexican, what I thought was Mexican. It could have been Spanish.

The Pomeroy affair spawned a number of positive developments. First, a couple of obviously sleazy undercover informants were at least temporarily decommissioned. Second, Oscar Mauzy was by this time a fairly influential

state senator, and he dragged DPS officials before his senate committee to explain their snooping. Between the lawsuit, the senate hearing, and all the attendant publicity, the DPS became publicly remorseful. The *Dallas Times Herald* reported in the fall of 1974 that the director of the DPS, Wilson Speir, had ordered destruction of all files on subversives kept in the agency. Apologies were issued to Pomeroy and Brannin, and the press reported that a "lengthy and detailed apology to the members of the First Unitarian Church" was made by Director Speir. Most important, albeit impossible to verify, the head of DPS intelligence testified that as a direct result of the Pomeroy matter, the agency had changed its policy. The change, according to his testimony, was "with regard to protest-oriented activities . . . our personnel will not monitor this type of activity . . . unless it has been approved by a Sergeant or a Captain and . . . there exists the possibility of . . . some type of crime or criminal activities . . ." Although much could be shoved into this characterization, it seems clear that the Pomeroy incident did force a sea change on the DPS.

The lawsuit dwindled away, having accomplished its purposes. The reality was, then and now, that there is no constitutional basis on which to sue government agencies for spying on citizens and maintaining records of their activities. The obvious hero in this matter was Bob Pomeroy, but none of this could have happened if his boss had not given him a copy of the Dimick report. Without the report, we could never have proven the existence of the surveillance. Of course, Judge Roberts stepped up to the plate once again and ordered disclosure of the informants—the kind of gutsy action that we had all come to expect from him. All in all, a fine time was had by the good guys, and all of us paranoids on the left felt vindicated.

13
Frank Erwin and UT Take On the *Rag*

LAWYERS WHO PRACTICE on the plaintiff's side of the docket routinely confront a great peril—a claim or claimant that looks simple and appealing at the outset and later mushrooms into years of struggle. This Trojan horse case is always lurking out there. Some lawyers protect themselves from any such surprises by taking only cases of a type they have done before, such as automobile accidents, workers compensation, consumer fraud. They hone their skills in a specific field and routinely decline anything outside their historic scope. There are, fortunately, more adventuresome souls who will take a flier in a new area of law, and thanks to them, and to our common law system, the law has expanded to redress wrongs previously ignored. Putting behind this little homily, I have always been a sucker for an appealing issue and more than once have fallen into the litigation sinkhole.

On a Sunday afternoon in the spring of 1969, soon after moving to Austin, I received a phone call at home. A mild young man's voice told me that Professor Schatzki at the law school suggested he call. He asked whether I thought the University of Texas could legally ban the sale of the *Rag* on the UT campus. With no thought of caution, and perhaps fueled by a few afternoon beers, I opined that such a ban would surely infringe First Amendment protections. This offhand opinion resulted in four years of litigation and two trips to the U.S. Supreme Court, all as a volunteer ACLU attorney.

Columbia University Press has recently published Professor Rossinow's treatment of the radical movement, *The Politics of Authenticity*. The work focuses largely on Austin of the 1960s and 1970s. According to Rossinow:

> The most important of the Austin left's countercultural efforts was the *Rag*. . . . The *Rag* was perhaps the sixth underground . . . newspaper in the country during this era and the first in the South. . . . The *Rag* was enormously important to the local left, especially after SDS fell into disarray. In those later years of the new left, the paper and its staff . . . became the real center of the left in Austin.

My new-left credentials ranged from marginal to nonexistent. I had appeared in 1968 at a statewide forum cosponsored by the *Rag* and the *Texas Observer*. The purpose of the conference was another attempt to try to bridge the gap between the radical and liberal communities, somewhat along the lines of the earlier Wimberley Radical/Lawyer adventure. The forum, attended by some five hundred people, was viewed by the radical community as a flop. The reason for the failure of the conference, according to the *Rag* editor, was "The Pathetic State of Texas Liberalism, Today." As one of the liberal speakers, I don't think I had taken umbrage at this disdain. Nor did I remind my new clients at the *Rag* that I was one of those old liberals whom they held in such low repute. In my remarks at the conference, I had urged the radicals to work within liberal Democratic politics, as "it was the only game in town." This message had not been particularly well received at the time. The reality, stifling as it might be, was that we old liberals were about the only people around that the new left could turn to in times of stress. Frankly, their movement was such

a breath of fresh air, I think all the old crowd happily stepped up to bat for them.

The *Rag* dispute was a major confrontation between the governing power of the University of Texas and the dissidents that abounded in the university community. Much of the dissent was within the student body, but many of the left were only tangentially connected—former students who were now Drag merchants, UT staff employees, and others just hanging around enjoying the Austin scene. The university itself was dominated by one person, Frank Erwin, chairman of the UT Board of Regents.

Frank and I had crossed paths in my youth when I had been a member of the Kappa Sig fraternity at UT, the fraternity that had been the bastion of the state's wealthy young hell-raisers. I had a brief stint in that role, and Frank was still, though long since graduated, partying around the Sig house, one might say. Now, however, he was playing on a much grander scale. He had been the head of the Texas Democratic Party as John Connally's man and later was made a UT regent by Connally. His two great loves seemed to be the University of Texas and the Kappa Sig fraternity, but he was a much more complicated and forceful figure than such a description implies.

Frank embodied to the left, and to me also, all the evils of the "good old boy" Texas power structure. He was the confidant of Johnson and Connally and wielded great power throughout the state. Among his charms was that he put himself on the line; he didn't send functionaries. When UT decided to alter Waller Creek as it meandered through the campus, the project required uprooting ancient cypress trees. Protesters climbed the trees and defied the construction crews. Frank himself showed up, directing the campus police to drag the protesters down and instructing them to get "those goddamn trees down and arrest those dirty hippies."

At the same time, if you wanted to wander into his late-night watering hole and go face-to-face with Frank, he would buy your drink and argue with you till closing time. For many years, Frank could be found holding court into the wee hours at Nick Krajl's Quorum Club on Red River, a favorite locale of politicians and lobbyists and the site of many a legendary drinking bout. During Johnson's White House tenure, Frank became a great spokesman for the Vietnam War. He had mounted maps of southeast Asia on the wall of the Quorum and would, on the slightest provocation, grab a pointer and lecture all within earshot about troop movements and other arcane matters about the war. When Frank and Bob Bullock were in their drinking prime, one entered the Quorum with a certain trepidation, for you never knew what to expect—like the old western movies where you tossed your hat through the swinging doors to be sure no one shot at it before you ventured in.

Given the current state of probity that seems to prevail, a couple of stories from that era might provide a bit of perspective. In the midseventies, Bullock and my wife Ann and some other Texas political figures, went to New York City for a national gathering of Democrats. This was some years before Ann and Bob went to "drunk school," as they later called it. On a late-evening cab ride in New York, Bullock became distressed by what he felt was excessive speed and he asked the driver to slow down. True to reputation, the cab driver ignored this request as well as a second plea by Bullock. At his persuasive best, Bullock reached into his boot, pulled out a pistol, pointed it at the cabby, and said, "I said slow down, motherfucker." Even a New York city hack could be convinced by Bullock when Bob set his mind to it, and the balance of the trip

was noticeably slower.

Frank's performances were more local. Much to the glee of the Austin left, Frank got picked up a couple of times for late-night drunk driving. The wily Austin lawyer Roy Minton always managed to set Frank free, though. Once, when Frank had been picked up late at night driving the wrong way on Sixth Street in Austin, Roy secured a jury acquittal with an argument that included a plea that the jurors should take pity on Frank, a lonely widower just looking for someone to eat enchiladas with. Such were the times . . .

The dirty hippies who produced and sold the *Rag* on campus became some of Frank's prime targets. To get rid of the *Rag*, the Regents amended their rules in 1969 to ban commercial solicitation on campus. Banning commercialism was not necessarily an unreasonable thing to do, but the rule labeled commercial anything that contained advertising. Such a definition would seem to have included the *Daily Texan*, the UT paper, which was chock full of ads. From the outset, UT had enforcement difficulties, for the *Rag* salesmen refused to leave the campus, and the rule on its face prohibited many traditional activities by UT student organizations. Having told the *Rag* staff that they could not be barred from campus, I had assumed that we would face some leisurely UT administrative process. I was caught off guard by UT's next move. Rather than enforce their rule in any traditional fashion, UT beat us to the punch by suing the New Left Education Project and a dozen or so young lefties identified with the production and sale of the *Rag*. Suit was filed in the state court of Travis County, where the regents were assured of a kindly reception. To avoid any slip-ups, they managed to get the case in front of a criminal district judge, Tom Blackwell, who enjoyed a well-deserved reputation as hostile to new-left activists and any other radical notions.

I knew I was a dead loser in the state courts, so I promptly filed suit against UT in the federal court on behalf of my state court clients, seeking to declare the regents' new rule unconstitutional. Here again, I faced the same problem I was still confronting in the Stoney Burns case: federal court unwillingness to intrude in state court proceedings. Although the U.S. Supreme Court had not yet ruled in Stoney's case, I knew I was in trouble there and fully anticipated an unfavorable ruling from the Supreme Court, a ruling that would surely jeopardize my *Rag* strategy. But, as in most things, the best defense is a good offense, and take the offensive I must.

Filing the federal suit accomplished several things: It bought me some time, it at least temporarily delayed the state court proceeding, and it allowed the *Rag* salesmen to continue their campus sales. It also gave me time to recruit new federal plaintiffs who were not before the state court, thereby perhaps enabling me to avoid the state court/federal court conflict. In short order, I added the UT Young Democrats and the Young Socialist Alliance as new federal plaintiffs. One other result of my federal action was to draw into the case on the side of the regents Charles Alan Wright of the UT law faculty. Professor Wright, at the time, deservedly enjoyed the reputation as one of the nation's foremost scholars on federal practice and constitutional law. Having him on the other side in federal court upped the stakes dramatically from my point of view and worsened an already difficult lawsuit. I have always assumed Charley Wright joined the case out of hostility toward my ploy of invoking federal jurisdiction. He had always been a great defender of student free speech, but he was at the same time a major proponent of "our federalism," the notion that federal courts had no business intruding in state court proceedings.

The regents' state court lawsuit was styled *New Left Education Project v. Board of Regents of The University of Texas*. The style somewhat reflects the size of the gulf between the litigants, for suing the *Rag* collective was not the same as suing some structured business entity that had officers and directors. I filed my written pleadings on behalf of the *Rag* defendants in typical lawyer fashion. The *Rag* staff reproduced the state's pleadings with their own responses interspersed throughout (shown in capital letters) and distributed the combined version as handbills given out on campus and elsewhere:

> Here it is folks, the document you've all been waiting for: The University of Texas at Austin vs. The Rag. The University started hasseling [*sic*] us about sales when we came out with our first issue three years ago. And it hasn't stopped since . . .

Then began the *Rag* commentary on sections of the court pleadings:

> Plaintiff is the governing body of a state institution of higher education existing under and by virtue of the Constitution and statutes of the State of Texas and is governed by a Board of Regents, whose Chairman is Frank C. Erwin, Jr., of Austin, Travis County, Texas.
>
> BIG FUCKIN' DEAL
>
> . . . The primary function of the University of Texas at Austin is to educate students attending the University and to aid them in becoming educated persons who are better able to cope with the world of today and tomorrow.
>
> WHAT DOES FRANK KNOW ABOUT TODAY AND TOMORROW?
>
> . . . The University also engages in research projects and projects in experimentation and development.
>
> THIS LAWSUIT IS THE MOST HIGHLY DEVELOPED EXPERIMENT IN BULLSHIT WE'VE SEEN SINCE THE SAME GUYS BANNED GENTLE THURSDAY 2 YEARS AGO.
>
> That Defendants, and each of them, are selling and distributing for a valuable consideration certain newspapers and publications known as "The Rag" and "Challenge."
>
> . . . VALUABLE CONSIDERATIONS? WE HAD A FEW PEOPLE COMPLAIN WHEN WE RAISED OUR PRICE FROM 15¢ TO 20¢ BUT THIS IS ABSURD.
>
> . . . The defendants and each of them have no vested legal right to sell and distribute newspapers and publications in violation of the rules and regulations of the University of Texas System which activity, when conducted without permission [WE ASKED FOR PERMISSION] is adverse to the best interests of the students, staff, and faculty of the University of Texas System, and unless such activity is restrained, Defendants will do Plaintiff irreparable injury. [THE RAG BREAKS CHROMOSOMES NEW LEFT EDUCATION PROJECT CAUSES LEUKEMIA CHALLENGE MAKES YOU VOMIT] for which there is no adequate remedy at law. [THIS IS THE MOST INADEQUATE ATTEMPT YET.]
>
> . . . and be restrained and enjoined from designing any other act tending to interfere with the normal educational processes; that Defendant be cited to appear and answer this petition.
>
> YOU BET YOUR SWEET ASS WE WILL. THE TCLU IS GOING TO HELP US AND WE ARE COUNTING ON SUPPORT FROM THE COMMUNITY IF THINGS GET TIGHT. SEE THE NEXT RAG FOR MORE DETAILS AND ANALYSIS. . . .
>
> Crawford C. Martin
> Attorney General of Texas

Lawyers are programmed to take depositions soon after a lawsuit is filed. The purpose of the time-consuming and expensive deposition process is to

begin to understand your opponents' factual and legal theories. This case was notable for the difficulties the attorney general had in attempting to understand the nature of the adversary. UT had sued two organizations, the New Left Education Project and the Radical Media Project. Inquiries as to the structure of these organizations were a bit fruitless:

Q: Mr. Waddington, are you familiar with a publication called the *Rag?*

A: Yes, sir.

Q: What is your connection with this publication?

A: Well, I guess I would be considered part of the collective that puts out the *Rag*.

Q: You are just one of the members of the group that publishes it?

A: Yes, sir.

Q: Do you know who the main people are that publish or print this publication known as the *Rag?*

A: You mean the other members of the collective?

Q: Well, the main ones. I am sure there are some that are more active in it than others.

A: Jeff Jones, Mike Wilson, Judy Smith, Linda Smith, Bill Meecham, Steve Russell, Dave Mahler. Then, there are a few others; I can't call their names.

Q: That is all you can remember?

A: Right. That is the main ones.

Q: Mr. Waddington, are you a member of the New Left Education Project or the Radical Media Project?

A: I am a member of the Radical Media Project.

Q: Who are some of the main members or leaders in the Radical Media Project?

A: Anyone who would sell the *Rag* is considered a member of the Radical Media Project. There are no officers or formal body.

The financial arrangements were equally murky:

Q: What did you do with this money, Mr. Winn, after you, say, had sold for an hour or two and had five or ten dollars?

A: This, again, is the gross receipts?

Q: Yes. What did you do with that?

A: I would take it to one person who is more or less in charge of sales. He usually sat across the street from the University campus on the Drag by the Co-op, between the Co-op and Hemphill's. I would give him seventy-five percent of what I had.

Q: In other words, you would only keep twenty-five percent for yourself.

A: Yes, sir.

Q: All right. Now, who were some of these people that you turned the money over to?

A: I didn't know their names.

Q: Were they students at the University of Texas?

A: I don't think so.

V: You just turned the money over to them?

A: Because I knew as a fact that they were associated with the *Rag*.

Q: How did you know who to turn the money over to?

A: Because I knew that people who were in charge, allegedly, of the *Rag* had designated certain people as being the person to whom I would turn the money over to.

Q: All right. Who were these people's names that designated this?

A: I don't know. In other words, you see, the way that associations run in many circles around the student body here, you may know someone in some cases intimately and never know their name. So in some cases, the questions you are asking are not applicable, although I understand why you are asking them. It's not—in other words, I may very well

know someone and not know his name.

Finally, the political dimensions were too far from the norm to be understood:

Q: When Dean Price—after Dean Price talked to you, did you stop selling the publication of the *Rag* because he told you to?

A: I stopped because the sun got too hot . . .

Q: Miss Sweeny, I believe you mentioned that you were not a student at the University at the present time, or haven't been since last May or June?

A: That is right.

Q: What are you doing now?

A: I am involved in political work.

Q: What type of political work?

A: Radical political organizing.

Q: For who?

A: For the International Revolutionary Movement. I can't be any more specific than that, because there is no one organization that I am working for.

Q: Ms. Sweeny, could you tell me a little bit more about this group? Where do they headquarter?

A: Well, I have been a member of SDS since last September, late September, and their headquarters are in Chicago.

Q: Is this the same outfit—what was—I forget the name that you said.

A: This is just what I would—like right now, there is a lot of questions about what, exactly, is SDS, who composes SDS—I don't know how abreast the Court is of what has been happening in the radical movement, but there is a great deal of controversy about what the exact nature of SDS is, and who actually is in control of SDS. There are several factions which call themselves part of SDS, so I just—I sympathize more with one faction than another, but they are all SDS.

Q: What was the name of this group—International what?

A: It isn't a name of a group. That is just the label that I would attach to myself. You know, it is not an organization. It is not in organizational form.

Q: Is it sort of a factional group of SDS?

A: No, that was just my own description of myself of what I was doing.

Q: Do you have any immediate superior, or somebody over you here in Austin?

A: No.

My own depositions were no more productive. I had somehow thought that I could gain the edge on Frank Erwin during the course of his testimony, but I underestimated the skill of the man. Before I was through, he almost had me feeling sorry for him, beset as he was from all sides. From his vantage point, he was simply defending his beloved university from assaults from conservative legislators who wanted to siphon away funds to their favorite educational institution in their home district, and from distraught right-wing alums who believed that UT had become a haven for dirty, pot-smoking hippies. Frank later solved the political problem by creating branches of UT all across the state, thereby co-opting most of the Texas legislature. But for the moment he would have us believe that he had no real grievance against the *Rag* and was only concerned with fending off attacks from the right wing.

So, as is often the case, the depositions were a meaningless exercise. On the other hand, I had a sympathetic three-judge federal court that kept giving me victories. The court consisted of all Kennedy/Johnson appointees: Circuit Judge Homer Thornberry, who had been the longtime congressman from

Austin before his appointment to the bench, and District Judges Jack Roberts of Austin and Adrian Spears of San Antonio. I won the early procedural skirmishes and was allowed to join my new plaintiffs and proceed to trial despite the state court lawsuit. Although the state judge found the regents' rules to be constitutional and tried to enforce them, the federal court found that the rules violated the First Amendment. The federal court held that the activities of the Young Democrats and Young Socialists "in solicitation of membership dues and/or the sale of literature constitutes speech and associational activities protected by the First Amendment." The presence of the new plaintiffs had saved the day, for the court did not have to struggle with the question of the conflict between state and federal power because my new plaintiffs were not before the state court. The court thus felt free to declare the regents' rule void. The regents did not have the *cojones* to try to enforce their state court order against the *Rag* salesmen in view of the federal court ruling. As a result, the *Rag* continued to be distributed on campus without interference for as long as the paper existed—what we might call out in the sticks a "dog fall," or a standoff. The regents spent three years in fruitless appeals, twice to the U.S. Supreme Court, and finally amended their rules. Of course, by the time of the final victory, my clients had drifted off, and the *Rag* had disappeared. I had no one to report to about my success. One of the inevitable roles of civil rights lawyers is sweeping up the debris after the war is over, and this case was no different.

The *Rag* litigation was neither the first nor the last experience with the University of Texas and free speech issues. The institution has never been wholly comfortable with the notion of robust speech. The Homer Rainey episode was a dramatic early demonstration of the conflict between a conservative power structure and the ideal of the First Amendment. Rainey was fired as president of the university in the mid-1940s by the right-wing businessmen who controlled the Board of Regents. Among the apparent reasons for the action was Rainey's unwillingness to oust liberal faculty members who were New Deal Democrats. One overt accusation was that Rainey had allowed the English faculty to include on freshmen reading lists John Dos Passos's U.S.A., allegedly rife with salacious passages. Frank Erwin, then a student, always insisted in later years that he had marched in the student protests that attacked Rainey's removal. Who knows? Stranger things have happened. Rainey catapulted his discharge into a race for governor of Texas in 1946, but was defeated in the Democratic primary by that grand old Kappa Sig, Beauford Jester. Rainey's race was the first postwar manifestation of liberalism in Texas until Yarborough emerged in the early 1950s.

My last run at UT on free speech issues concerned faculty members who, in our view, were targeted for salary cuts because of their political speech activities. There was substantial ferment in the faculty during the 1970s. Erwin had chased off John Silber from his deanship of Arts and Sciences in what must have been a classic clash of egos, and Silber then went off to Boston to pursue his own ego drives. Later, a decent man, Stephen Spurr, had been named president of the university and had made the mistake of thinking the office carried with it some authority. In fairly short order, he was crossways with Frank Erwin and on his way out the door in 1974. Faculty and student protests had no effect, and shortly thereafter Lorene Rogers was named interim president, setting off a new round of protests. Rogers was chosen by the regents, bypassing completely the faculty senate's traditional advisory role. By

the fall of 1975 the campus was in an uproar as the faculty overwhelmingly condemned Rogers's appointment, and a *Daily Texan* story reported a poll reflecting that 90 percent of the students felt Rogers should resign. Once again, bedlam was the order of the day.

Ironically, Frank Erwin had been forced somewhat to the sidelines in this latest brouhaha, although his hand was clearly present. Erwin's term as chairman of the regents had expired in 1974. Dolph Briscoe was governor of Texas, and Frank was on the governor's enemies list as an outgrowth of the 1972 governor's race. Erwin had been allied with Lieutenant Governor Ben Barnes's race against Briscoe and Sissy Farenthold for the governorship. Erwin's name was closely associated with a story that circulated to the press claiming that Briscoe had been hospitalized for depression. In all events, Briscoe dumped Erwin from the Board of Regents and named that great civil libertarian and former governor Allan Shivers to succeed Erwin as chair. The regents then promptly hired Erwin to "lobby" for the university. No dramatic changes here.

One of President Rogers's first official acts was approval of the budget for the 1975–1976 fiscal year. Remarkably, she chose to reduce the salary recommendations for a dozen or so of the most outspoken enemies of the administration—recommendations that had all been cleared through their respective departments and other levels of university bureaucracy. Among those singled out for salary cuts were Larry Shepley from the Physics Department, chair of the university AAUP chapter; Standish Meacham and Tom Philpott of the History Department, who were believed to have walked out of the spring commencement address to protest the commencement speaker, the hawk McGeorge Bundy; Forrest Hill, a long-time liberal activist; Ed Allaire of the Philosophy Department, an outspoken Rogers opponent in the faculty senate; and David Gavenda of Physics and Phil White of History, the two principal leaders of a faculty organization known as TACT (Texas Association of College Teachers).

We filed suit in federal court with ACLU support. The chief problem with a case of this type is that you must prove an unlawful motive, that is, that the actor—in this case Rogers—intended to punish because of free speech activities. Two days of deposition of President Rogers established only that her explanations for the salary cuts were pretty forlorn. She had no direct information on any of the individuals' attainments; rather, she was motivated by feelings that she could not quite articulate that these individuals didn't deserve these raises. This is not much to take to the bank, and Judge Roberts, who heard the case, was not impressed. I suspect the last thing he wanted was to be besieged by Rag unhappy UT faculty lawsuits. In any event, Roberts poured us out after trial, and we took off to the Fifth Circuit on appeal.

On appeal, we were slightly more successful. The court in *Allaire v. Rogers*, 658 F.2d. 1055, gave us a victory of sorts with these words: "In view of all this evidence that Rogers did in fact act with retaliatory intent, if we were making a de novo factual determination, we might well conclude that the plaintiffs had carried their burden of proving that their political activities were a "substantial" or "motivating" factor in Rogers' salary decisions. However, we are unable to find that the district court's contrary conclusion was clearly erroneous." On the other hand, the court gave us a clean victory in the White appeal: "Based on [Rogers's] admissions, we conclude that White's activities on behalf of TACT were a substantial factor in Rogers' decision to withhold the $400 merit raise

she had initially awarded him."

The case was in litigation for six years, and by the time the appellate court acted in 1981, there were few left standing who even recalled the controversy. Some would say that it was a frivolous waste of time for $400, but I wouldn't. If you don't stand up and start swinging when free speech is attacked, then there's not going to be any. I suppose the University of Texas is more tolerant of speech in these years. The fact that it has published this book is some evidence in that direction.

14
Law and the Counterculture

I HAD SO MUCH FUN practicing anti-establishment law during the era of the 1970s, I should have paid for the privilege. Stupidity abounded. It seemed as though every day brought some new outrage by governmental bodies as they tried to hold the line against the onslaught of the unwashed.

Hair was everywhere during this era. At times the issue of long hair seemed to outdistance Vietnam as a source of controversy. In my own household, our son Dan was sent home from Westlake schools because his hair was too long. I suppose it all began with the Beatles, but wherever it began, hair length soon became a major generational cleavage. During this time, Sam and I also did a certain amount of "dope cases," as we called them, mainly Austin kids or UT students being busted for smoking a joint or having a lid (an ounce of marijuana) under the front seat of the car when stopped on a traffic violation. Stopping of long hairs by law officers was a routine measure. The police soon learned that smelling the aroma of marijuana as they approached the car would entitle them to search the vehicle, which resulted in a remarkable improvement in law officers' olfactory senses. It seemed almost inevitable that such searches would produce at least a roach (a partially smoked joint to the uninitiated). Possession of any amount of marijuana in those days in Texas was a felony, carrying potential time in the state penitentiary.

Hair length and misbehavior became inextricably linked. Sam and I saw many a worried parent in those years. Most of the kids who were busted for pot in Austin came from respectable middle-class homes, and it fell to the parents to find and pay for lawyers to save their children from the tentacles of the law. The most common lament took this form, "He was a wonderful kid, and then he let his hair grow long, and he never was the same again." There was a hamburger joint on Lovers Lane in Dallas that became an icon of Dallas virtue because of its refusal to sell burgers to long hairs. In Austin, one of the era's earliest political demonstrations was directed at Don Weedon's gas station out on Guadalupe because of alleged abuse of hippies. The Civil Liberties Union received periodic complaints about sheriff's officers in Pecos stopping hippies traveling through West Texas and shaving their heads as part of their welcome to Texas. From today's vantage, none of it makes any sense, but the world was indeed divided along tonsorial lines for a decade or so from the midsixties to the midseventies.

Given the country's predisposition to litigation, courts were inevitably drawn into the divisive process as students were kicked out of school and teachers fired because of too much hair. Sam and I managed to avoid the humbling experience of trying to argue that discrimination based on hair length rose to constitutional proportions, but there was no way to escape the issue completely. My last run on the hair loop captured the insanity of the moment. A most serious and supportive father came to the ACLU because his son was being kicked out of Austin High—his hair length didn't pass muster. I agreed, as a pro bono matter, to pursue the administrative process on behalf of the young man. Thus we found ourselves finally with an audience before Irby Carruth,

the superintendent of the Austin Independent School District. Carruth had been the superintendent of the Waco schools when I made my tortured way through that system, and his son had been a classmate, so I felt I knew him somewhat. He was at that time one of the highest-paid public officials in the state. The meeting was most cordial, with a very presentable father and son. Then we came to the meat of the coconut, so to speak.

Superintendent Carruth got up from behind his massive desk and walked around behind the young student. Using his forefingers as if they were scissors, he demonstrated how much hair needed to be clipped in order for the young man to be reinstated to school. There you have it—that's what powerful people did with their time in those years. My memory is that a real barber did a slight nip, and the matter came to its inglorious end.

The passions of the era generated some unbelievable controversies, many of which did find their way to the courthouse. One of the more improbable was the Chuck Wagon blowup. The Chuck Wagon was a gathering place in the student union on the UT campus and a favorite hangout for radical activists, student and nonstudent alike. Among its patrons were plenty of kids who had dropped out of conventional lives and come to Austin to make the scene. They lived in collective housing around the campus, sold the *Rag*, sold flowers on street corners, became "Drag vendors" along Guadalupe across from UT, and generally made a nuisance of themselves in the eyes of UT officialdom and local law enforcement.

There was a dustup on the UT campus in November 1969 between Austin police and Chuck Wagon habitués when the police entered the building and took a young runaway into custody. Four nonstudents were charged with the misdemeanor of disorderly conduct as an outgrowth of the confrontation, UT reaction was swift, and the Chuck Wagon was closed to nonstudents. The *Texas Observer* reported that Travis County District Attorney Bob Smith was calling for a grand jury investigation of the Chuck Wagon and "threatened to close the facility permanently."

The next week brought a full-scale showdown. A rally on the West Mall of the campus protested the closure of the Chuck Wagon to nonstudents, and a large contingent of participants left the rally and entered the Wagon refusing to show student IDS. Before the afternoon was over, UT officials called in the gendarmes, and fifty DPS and Austin police officers arrived to clear the place. In the ensuing melee, windows were broken and some vehicles were damaged. District Attorney Smith, true to his word, took action and secured sealed felony indictments of twenty-one persons for rioting and destruction of property. Most of those indicted were highly visible left-wing activists, some of whom had undoubtedly been a part of the ruckus, but others certainly were not involved. The indictments alleged, in part, that the defendants "did then and there engage in a riot . . . and unlawfully assemble together . . . at the Main Campus of the University of Texas *Law* . . . engage in violent, abusive, indecent, profane, boisterous, unreasonably loud disorderly conduct." Felony indictments are serious business, and the gravity of the moment began to cause alarm.

To their credit, the left-wing activists treated it as a call to arms. Defense committees and fund-raisers were organized, and though I don't think any money was raised, plenty of hell was. Mailings went out to sympathetic souls across the state claiming: "We are convinced that 21 recent felony indictments here in Austin are part of an intensive effort to destroy the student movement in this area of the country." Rhetoric aside, these indictments were certainly

designed to put the student left in Austin into a deep freeze. Largely at the instance of Martin Wiginton, our resident agitator, and Cam Cunningham, my onetime client and now new-left lawyer, an aggressive legal strategy was developed. Hell, we would just sue District Attorney Bob Smith. Since we could not figure out how to defend that many cases, it seemed in this instance the best defense was a good offense.

In January 1970 we sued District Attorney Bob Smith in the state courts of Travis County, one of the balisier pieces of litigation of the era. The lead plaintiff was David Pratt, who had been indicted out of the Chuck Wagon incident. Other plaintiffs were activists who alleged fear of future indictment because they had been in the crowd around the Chuck Wagon, and UT faculty members Emmon Bach, Tom Gould, Al Schild, and Elliott Zashin, who alleged that the indictments had a chilling effect on free speech on the UT campus.

We asked that the court prevent any future indictments out of the incident and prohibit any prosecutions under the pending indictments. The lawyers who signed the pleadings for the plaintiffs were Warren Burnett of Odessa; Maury Maverick Jr. of San Antonio; Cam Cunningham and his partner, Jim Simons, of Austin; and Sam Houston Clinton and I. I don't know whether we were fearless or foolhardy, but, remarkably, the strategy worked. The lawsuit never moved, but it did seem to gum up the works in the district attorney's office. After a decent interval, the district attorney agreed to dismiss the indictments in exchange for dismissal of our dubious lawsuit. So all is well that ends well, and a temporary cessation of hostilities between the left and officialdom ensued in Austin.

Austin was by no means the only Texas city with raging conflicts between the counterculture and law enforcement. Police departments everywhere used the Texas vagrancy law to bust undesirables, but the San Antonio police used the law with remarkable gusto. As a result of their zeal, I ended up in a constitutional challenge to the Texas vagrancy law. On the afternoon of November 8, 1968, a contingent of San Antonio police and federal agents raided an establishment known as Ned's Renaissance, located at 427 N. St. Mary's, and arrested thirty-two people—every adult on the premises. Seven juveniles were also collared and hauled off to juvenile detention. One of the arresting officers described those arrested in his testimony: "Most . . . were barefooted . . . unshaven. They had long hair, and were filthy." Their criminal conduct was equally troubling: "Some were talking, some were sitting on the floor, some were doing what appeared to be a dance." Those arrested were told that they were "being booked for vag," cops' shorthand for the vagrancy statute.

Other evidence showed the San Antonio police routinely used the statute to arrest undesirables, although actual prosecutions were rare. Vag busts were a convenient way to clean up the San Antonio streets.

The Texas vagrancy statute was a thing of beauty. It provided, in part:

> The following persons are and shall be punished as vagrants, viz.:
>
> 1. Persons known as tramps, wandering or strolling about in idleness . . .
>
> 2. Persons leading an idle, immoral or profligate life, who have no property to support them, and who are able to work and do not work.
>
> 3. All able-bodied persons who habitually loaf, loiter and idle in any city, town or village. . . .
>
> 6. Every common gambler . . .

7. All companies of gypsies, who, in whole or in part, maintain themselves by telling fortunes. . . .

13. All persons who advertise and maintain themselves in whole or in part as clairvoyants or fortune tellers . . .

Edward Gallant, who had been busted at Ned's, became the lead plaintiff in a federal court challenge to the constitutionality of the law. The criminal complaint filed against Gallant after his Ned's arrest alleged in part that he was a "vagrant . . . an able-bodied person who habitually loafed, loitered and idled in a public place, to wit 427 North St. Mary's Street . . ." Our suit was assigned to a three-judge federal court consisting of my old Austin buddies Jack Roberts and Homer Thornberry, and Adrian Spears of San Antonio. After a fair amount of legal jockeying with the attorney general of Texas and Jim Barlow, the Bexar County district attorney, the court declared the bulk of the law unconstitutional, including all of the sections quoted above. The case styled *Gallant v. Barlow* made a couple of trips to the U.S. Supreme Court on unsuccessful appeals by the state of Texas, and the statute was finally laid to rest in 1971. An AP wire story noted that "Texas has been without the major portion of its vagrancy statute for nearly a week, and the republic still stands." I had a nice congratulatory note from my dear river-running comrade Bill Kugle of Athens: "As one who has led an idle, immoral and profligate life for the past twenty-five years, I am deeply grateful to you for removing me from criminal status." Such were the joys.

15
Austin Politics—Come the Revolution

WHEN ANN AND I RETURNED to Austin in 1969, the politics of Austin and Travis County were largely indistinguishable from those in other parts of the state. Local government was in the hands of old-guard conservatives, essentially an all-white-male team. Nevertheless, in the space of six years, the entire face of Austin politics was rearranged, and it remains so today. In a variety of ways, Ann and I were in the midst of those changes and reveled in seeing the community reinvent itself. My own involvement was in activities that helped set the stage for change; Ann, of course, was neck-deep in political action.

Several events that ultimately interconnected helped lay the groundwork for change to occur. The Austin City Council, led by Emma Long, had a brief flirtation with a progressive agenda in the mid-1960s. Emma was combative and progressive and about the only joy in a drab Austin political scene. Her husband, Stuart Long, was a delightfully droll political writer and a font of political wisdom. With Emma's prodding, the Austin City Council passed a fair-housing ordinance, provoking a conservative outcry that resulted in a citywide referendum repealing the ordinance and the subsequent defeat of the council members who had supported the proposal.

Coalition politics was always the dream of Texas liberals. Austin was one place where the coalition that ultimately emerged was somehow strong enough to endure. At the outset, it required bringing traditional liberal Democrats together with groups that had previously been disengaged. The University of Texas provided an enormous political resource through its faculty, staff, and student body, but winning elections required more—notably, bringing new-left activists into the traditional political arena; energizing the somnolent Hispanic community; giving hope to a politically informed but excluded Black populace; and, finally, capitalizing on a previously nonexistent student vote.

By the time Ann won her seat on the Travis County Commissioner's Court in 1976, the coalition had swept away the last vestiges of the old order. How did all of this happen? Here's a stab at a summary of events.

The Economy Furniture strike of 1969 helped to galvanize the Hispanic east side. The company, located in east Austin, had almost an entirely Mexican American work force. Among the strike leaders were two members of a potent east-side family, the Ruiz family, Jim and his father, Víctor. Another family member, Buddy Ruiz, had made an unsuccessful city council race in 1969, the first Hispanic in memory to venture into the election arena. The strike was long and bitter and was largely an east Austin event; both the strikers and the scabs lived in the same neighborhoods. The results were predictable: fights, cars vandalized, barroom brawls. Several of the strike leaders were indicted for violence, and my partner, Sam Clinton, represented them throughout the criminal trials. A couple of the leaders went to prison for short terms. Still, the strike persisted. By the time of the 1970 primaries, the strikers and their supporters had become community activists. An immediate beneficiary of this activism was Richard Moya, who won the southeast-side county commissioner seat in 1970, becoming the county's first elected Hispanic official. The ground

troops for Moya's victory came in large measure from the strikers. They put up signs, tore down opponents' signs, registered voters, and got out the vote. Moya's victory was a crucial step in building a political organization on the Hispanic east side. Moya himself had progressive credentials and proved to be an enormously effective and durable officeholder.

The strike engaged another element of the community: new-left activists took up the cause. One critical facet of new-left ideology was identification with worker values. This strike was made to order, as it so completely enveloped Austin's historically deprived Mexican American community. The left provided bodies and talent that enabled the strikers to get the message out to the general community. Inevitably, many of the young radicals got drawn into the political side of things, as the strike continued to provide an organizing base for its several years' duration. This was back in the days when you could know and locate your enemy in a labor dispute—there was no anonymous foreign corporation holding the reins at a distance. The owners lived in Austin, indeed, in the same high-rise condo as my mother. It was a jolt for the residents of Cambridge Tower to look up and see chanting pickets surrounding their building at the corner of Nineteenth (Martin Luther King Blvd. came later, after the political revolution) and Lavaca, in an unprecedented tactic for Austin labor. All of the stops were pulled out on both sides, and the strike seemed headed for an inevitable standoff. I won an NLRB decision on behalf of the union and the strikers, which helped force the company to settle. The scabs were fired, strikers returned, and a new contract was negotiated. It was not only a famous victory for the union and the strikers but also a major milepost in the changing of the political scene.

Another labor dispute of this era helped forge alliances between the old-guard labor movement and the hippie underground. The University of Texas had established a shuttle-bus system to haul students and staff from the far corners of the town to the campus. For some reason, driving a shuttle bus seemed to be a magnet for the freak population. It appeared as if most of the drivers had just rolled in from the Haight, complete with hair, beads, and heaven knows what else. A number of issues, including the right to unionize, wages, and drivers' dress codes, provoked a bitter strike. Before the seventies ended, two serious strikes engaged the university community and the drivers; both strikes were highly politicized and ultimately successful. At least two current officeholders in Travis County came through the shuttle-bus union, County Attorney Ken Oden and Probate Judge Guy Herman, as well as perennial city council candidate "Crazy" Carl Hickerson. The union was composed of Maoists, anarchists, and proponents of every political flavor, but they stuck together and won, and many of the union activists moved into Austin's electoral politics, providing a slightly anarchist element. This element probably reached its zenith when former street flower salesman Max Nofziger was elected to the Austin City Council in the 1980s.

One other issue contributed to bringing the counterculture crowd into the traditional political mode, and that was the battle with the Austin City Council over the right for antiwar protesters to obtain parade permits and conduct peaceful demonstrations against the war. As described elsewhere, that was a stirring battle in 1971. The Austin City Council of those years was happy to have drunken Shriners careening through the city in their parades but could not tolerate antiwar protesters on the city streets. This high-handed attitude led many on the left to take up electoral politics in order to change the Austin City

Council. Indeed, the first major breakthrough on the council was the 1971 election of Jeff Friedman, who had been a prominent student antiwar activist.

Clearly, 1972 was the breakthrough year in Austin politics. This was the year of the emergence of the student vote, as well as the marked appearance of gender politics and the women's vote. UT Austin is, and was at that time, huge, but student participation in politics was historically minimal for a variety of reasons. State law limited the vote to twenty-one-year-olds; state law placed impediments, if not absolute barriers, to students registering to vote in their college community; and only limited effort had been made to activate the student precincts. In 1971, the eighteen-year-old vote came into being through an amendment to the U.S. Constitution. When 1972 was over, 25,000 students were registered voters in Austin, according to David Butts, one of Austin's keenest political observers and a longtime activist. The emergence of this student vote sent paroxysms through the establishment and prompted efforts to bar students from voting at their college residences. As described in the next chapter, I filed and tried three lawsuits challenging Texas laws that sought to limit student voting. The first case was a disaster, but the other two put to rest any barrier to student voting. And in Travis County, at least, efforts to prevent student voting became nothing more than conservative grumbling.

The emergence of the women's vote was also in many ways linked to litigation. Sarah Weddington of Austin had tried and won *Roe v. Wade*, the nation's landmark pro-choice ruling. The trial court that had voided the Texas abortion statute had been composed of our old Dallas friends, Judges Sarah Hughes, Mac Taylor, and Irving Goldberg. Weddington later argued the case in the Supreme Court, winning an incredible victory for a woman's right to freedom of choice. This historic ruling has withstood almost thirty years of continuous assault. Obviously, Sarah was a heroine to young women, as she should have been. In 1972 she announced as a legislative candidate from Travis County. With Sarah on the ballot, the feminist movement of the new left could hardly sit on the sidelines decrying electoral politics. Statewide, the same impetus emerged from Sissy Farenthold's 1972 run for governor. Sissy was the state's first credible woman candidate for statewide high office, and she was a progressive. Ma Ferguson had served as governor during the 1920s, but she had been generally perceived as a stand-in for her deposed husband, Pa Ferguson. Sarah Hughes had run unsuccessfully for the Texas Supreme Court in 1958, but Sissy's race was for all the marbles.

Ann had forsworn political involvement when we moved to Austin, expressing a desire for a simpler life—working in the garden, bee keeping, and such. She had done fairly well adhering to this less public life. However, sometime in late 1971, Ann was approached to run Sarah Weddington's legislative campaign, and all her resolve went out the window. Sarah, although only twenty-five at the time and fairly prim, was nonetheless a first-rate candidate. She was energetic, willing to listen, and well spoken. Ann, who had been around politics for years, had never had this much campaign responsibility. It turned out that Ann was a natural: she had imagination, humor, and a flair for gaining publicity. As later years showed, Ann was a consummate campaigner, and she displayed all of those talents in Sarah's race.

The Democratic primary runoffs of 1972 contained most of the energy. Statewide, Sissy had knocked off the favorite, Ben Barnes, in the first primary and now faced Dolph Briscoe in the runoff for governor. Barnes had been tarred by the legislative Sharpstown scandals and had proven vulnerable to

Farenthold's clean-up-government campaign. In Travis County, there were three legislative runoffs—Sarah Weddington against Hugh Hornsby, from an old Travis County family with links back to the baseball great Roger Hornsby; Larry Bales, of Scholz Garden fame, against Harold Davis, a know-nothing incumbent; and Gonzalo Barrientos against incumbent Wilson Foreman, a typical conservative of the era. The money was all in the opposition camps.

Bales trounced Davis, unfortunately giving Bales an exaggerated sense of his drawing power. Sarah Weddington was probably one of the first candidates to face the Catholic Church in a political race over the abortion issue. She won handily, despite difficulties on the Hispanic east side. I pushed cards for her throughout election day at the largest east-side Hispanic box; my card-pushing opponent was the Democratic precinct chair, who had been activated by the abortion issue. I even saw some of my old buddies from the Economy strike hauling, somewhat shamefacedly, Hornsby voters to the polls.

The heartbreaker was Gonzalo Barrientos's razor-thin loss to Foreman. Gonzalo had been a director of the war on poverty's VISTA program in South Texas. The program had become controversial in the late 1960s as VISTA volunteers began to do the unthinkable: encourage poor Mexican Americans to register and vote. An incensed Governor Preston Smith ordered the VISTA volunteers out of Del Rio and Val Verde County, further evidence of the fear that Hispanic activism inspired in the establishment. A sizable protest march and rally ensued in Del Rio—all with much attendant publicity. Wilson Foreman seized on this earlier controversy as the basis for a television onslaught attacking Gonzalo for sponsoring radical politics from south of the border. It was the last racist campaign in Travis County, but, sadly, it was successful and bought Foreman one more term in the Texas house.

Although 1972 was not a progressive sweep, the handwriting was fairly clear; indeed, with the help of the student vote, the longtime sheriff was defeated by reformer Raymond Frank. Frank's victory, as sometimes happens in politics, began to lose its luster as his behavior in office became increasingly difficult to understand. At the time, it seemed to be a major break with the past and a hint that county government was soon to fall to the liberal coalition.

Sissy Farenthold lost, of course. It was a great race, but the state wasn't ready for an intelligent, progressive woman. Dolph Briscoe made none of the mistakes that characterized Clayton Williams's later race against Ann. Briscoe, a rancher from South Texas, was the state's largest individual landowner and had made his reputation years earlier leading the legislative battle to eradicate the screwworm. The state settled into normalcy under Briscoe's mild and almost invisible leadership. Gonzalo's loss did have one salutary side effect: Wilson Foreman had to go into hock to fund his sleazy campaign. As a result, Ann and I, along with Wilson's neighbor John Huber, were able to buy Wilson's farm on the North San Gabriel River at something of a fire-sale price. For twenty years or more, the farm was the site of a generation of antic behavior. Braving the elements, ticks, and fire ants, we held massive campouts along the river. We sang, told stories, got loaded—all of the traditional liberal pastimes. It seems to me that Molly Ivins's thirtieth birthday produced campers and celebrants numbering in the hundreds. I remember with some clarity another occasion when we had lured Bob Bullock out to take a canoe run down the river. He spotted one of our number lighting up a joint and observed, "I always figured you liberals went camping just to smoke marijuana." It was a wonderful place for skinny dipping and frolics, now gone the way of the

developer's bulldozer.

A special election in 1973 drove one more nail into the conservatives' coffin with the election of Lloyd Doggett to the Texas senate. Doggett's win encouraged everyone to believe we were becoming unstoppable. In fact, in 1974 Larry Bales got the idea that he could take on the incumbent Jake Pickle, which, on reflection, was a decision that now seems absolutely laughable, given Pickle's astonishing strength. Pickle had come out of the old conservative wing of the party. He had been the architect of one of Shivers's more virulent gubernatorial campaigns against Ralph Yarborough, and none of us were comfortable with him, but he sure did seem stout, as we used to say.

The 1974 legislative races seemed in the bag, because everyone assumed, as did I, that I would win the second round of *Regester* and establish single-member districts for Travis County, thus ensuring two strong minority seats on the east side. Wilhemina Delco was running for the legislature as the first Black candidate from Austin. She had been on the school board, but her victory there had been in a low-turnout election, and no one knew how a Black would fare countywide in a Democratic primary. The prospect of single-member districts seemed to ensure her a relatively easy race. Gonzalo was gearing up to take on Foreman again in what was expected to be a heavy Hispanic east-side district. Sarah had no credible opposition, and the current district attorney, Ronnie Earle, seemed a shoo-in for the fourth legislative seat to succeed Bales. In January 1974, the federal trial court in *Regester* ordered, as expected, that the 1974 legislative elections be held in new single-member districts. The court had placed into effect our carefully crafted single-member-district plan, and everything was rosy.

Out of the blue, about a month before the May primary election, the Supreme Court stayed the trial court order, throwing us back into countywide legislative elections. I was aghast, and our crowd was in an understandable panic. I had moved from hero to schmuck in the space of a few hours. Elsewhere I have detailed the protracted *Regester* litigation, of which this stay was one piece. The stay order, and the reversion to countywide elections, coming at the last minute, threw all of the legislative campaigns into a tizzy. Miraculously, after much anguish, it all worked out. Wilhemina's opponents could not run a credible race. Unfortunately, Foreman was still potent countywide, and he and Gonzalo were once again thrown into a runoff, and again it turned out to be a squeaker. By the time of the runoff elections, the students were gone for the summer, which meant the loss of a huge progressive voting bloc. David Butts, who was the precinct chair of one of the large student boxes, had the foresight to distribute absentee ballot applications for the runoff to his student voters during the first primary, and urged them to apply for absentee ballots. This may have made the difference, for Gonzalo's victory margin was less than 100 votes. Even so, a victory it was, and suddenly, Travis County not only had a feminist in the legislature, but a Black and a Hispanic as well. These were breakthrough elections. By 1976, single-member legislative districts were finally established statewide, and minority legislators soon became a matter of course in Austin and elsewhere across the state.

Pickle waxed Bales, losing only a few east-side precincts. Richard Moya had been able to produce some votes for Bales. Richard later told me, by way of explaining Pickle's enduring strength, that Pickle called him at home on Sunday morning after the primary. "Richard, I am worried that you and I may have some problems. I am coming by. I'd like to take you to breakfast this

morning so we can talk about it." A good politician never rests and always seeks to secure the base, and Pickle was surely that. Carole Rylander, onetime Austin mayor, learned the same lesson some years later; she switched parties to become a Republican and run against Pickle. Her vote was barely a blip on the horizon.

The Austin City Council went progressive the next year, as the 1975 election produced a virtual liberal sweep that included Emma Lou Linn; Johnny Trevino, the first Hispanic member; and Jimmy Snell, from the Black east side. Internal bickering managed to erode the strength of this council over time, but their victories were a clear demonstration of the endurance of the progressive coalition.

By 1976, it was time for the liberals to look elsewhere. The state legislative offices and the city council were firmly in control. The last bastion of the old guard was the Travis County Commissioner's Court. Myth has it that liberal leadership approached me to make the race for county commissioner, and I suppose there is no reason to disturb that notion. I do know that I urged the crowd to push Ann to make the race against the incumbent Johnny Vouduris, and I do know that I encouraged Ann to make the race. By now, the kids were reasonably along; Ellen, the youngest, was twelve, and Ann seemed restless with her life. Good old David Butts produced the precinct analysis of the district, which contained some of the best student boxes, in the married student housing; tony old west Austin, where Ann should be able to appeal against her somewhat redneck opponent; and south Austin union precincts. Butts felt the race was winnable.

If ever a duck took to water, it was Ann to campaigning. She was indefatigable. Butts outlined the precincts she was to walk door-to-door, and she did it. Vouduris had plenty of conservative support and money, but he was no match. I sort of ended up as the sign man. It was a given in those years that every local candidate, to be credible, had to put up wooden signs. On more than one occasion, I loaded the van with signs and headed out Lamar Boulevard to Oak Hill and Bee Cave, putting up signs all along the way. This was Vouduris's territory, however, and as I would retrace my route, every single sign would have disappeared. Ann's campaign efforts were more than sufficient to overcome the deficiencies of the sign operation. My representation of most of the unions helped get labor backing, and Ann was endorsed by all of the Democratic clubs. Truthfully, Vouduris never knew what hit him. No one had ever seen a local campaign run with the level of focus that Ann achieved.

The tension of waiting for election returns was somewhat eased by a telephone call to Ann midafternoon on election day. Travis County had recently abandoned paper ballots for the "modern" punch-card system. In part, this move was justified by the claim that use of punch cards would prevent election judges from knowing how the vote was going in their precinct. The argument was that, while the judges could easily read the paper ballots, the punch cards were indecipherable except by electronic counters. This argument, however, failed to take into account human ingenuity, as happens with so much modern technology. Conrad Fath, one of the world's great fishermen, storytellers, and Democrats, was the election judge of the Barton Hills precinct, a precinct deemed critical to Ann's chance of success. The gurus had reasoned that if Ann could carry this bellwether precinct, victory was assured. Connie had rather easily deciphered the ballots and called to report that Ann was carrying the precinct with 55 percent of the vote. Connie has, to our great sadness, gone

from this earth and is beyond the reach of election officials who might chide him for this breach.

It was a great primary victory. Ann disposed of her Republican opponent in November and became Travis County's first woman commissioner. The rest is history. Probably no one in Texas politics ever leveraged as much recognition out of a county commissioner seat as did Ann.

An anecdote from the 1976 elections provides a hint at the nature of the times. A dear friend, Frank Ivy, had left the UT student attorney's post to run for justice of the peace in the central Austin district—the courthouse JP, as it was known in those years. Frank got our old newspaper friend Sara Speights to aid him in his campaign. She dutifully set about sending him door-to-door and dropped him off on his maiden effort in a precinct just east of I.H. 35 and north of Manor Road. Frank was to door-knock for three hours and Sara was to pick him up at a scheduled rendezvous. Frank did not appear, and Sara heard nothing from him until the next day.

The first and last door that Frank hit that day found Mitch Green at home. Mitch, who is by now a skilled lawyer, was a typical Austin ne'er-do-well in those years. He questioned Frank as to why he should care who held the JP post. Frank explained that if Mitch were to be arrested, say, for example, for possession of pot, his first encounter with the criminal justice system would be the courthouse JP. Mitch was so impressed by the explanation that he invited Frank in to smoke a joint. There ended Frank's door-to-door campaign for the day. Frank had been characterized by his opponent as the conservative in the race, a notion that perhaps conveys a sense of Austin in that era.

Frank won his race, and both Ann and Frank took their oath of office at our local watering hole, Fletcher Boone's Raw Deal. If this was not sufficient affront to the old order, to ice the cake, Eddie Wilson, of Armadillo fame, took the oath as president of the Musicians Union on the same occasion. Everyone felt fairly bulletproof in those halcyon times.

16
Student Voting Comes of Age

THE TWENTY-SIXTH AMENDMENT to the U.S. Constitution, allowing eighteen-year-olds to vote, became effective in 1971. Suddenly loomed the prospect of college students voting in large numbers in their college communities. Predictably, panic ensued. Student voting issues began to crop up everywhere.

I got trapped into filing suit on behalf of Prairie View A&M students in the federal court in Houston. The cause was so righteous, but the venue was so atrocious. The case became a textbook example of the dangers to constitutional litigation in a hostile forum. Prairie View was an all-Black college located in a rural East Texas county near Houston. At that time, counting the student population, as the Census Bureau did, Waller was the only majority Black county in the state. The tax assessor of Waller County, Leroy Symm, was determined that Prairie View students were not going to vote there. It took almost ten years and a half-dozen lawsuits to overcome Symm's obstinacy. Symm was greatly aided in his efforts by Federal Judge James Noel, and herein lies the tale.

The Texas Election Code at the time made it difficult for students to qualify as voters in their college communities, providing: "A student shall not be considered to have acquired a residence at the place where he lives while attending school unless he intends to remain and to make that place his home indefinitely after he ceases to be a student." Tax Assessor Symm had fixed on this provision and had devised, with his lawyer's aid, a questionnaire that he required of every student who sought to register to vote. Essentially, Symm would register only those students who had parents living in the county or who owned real property in the county—obviously, a tiny fraction of the student body.

A Black landowner in the county, Eristus Sams, was the prime mover in pressing the student issue. For Sams, this struggle to enfranchise the students became a career cause. At his urging, I filed suit on behalf of a half-dozen students who had been refused registration by Symm. Two of the plaintiffs were veterans who had returned to school after military service, but even this fact did not elicit any slack from Symm. In fact, it was his testimony that no person who was "in Waller County for the purpose of obtaining an education" could establish voting residency in the county. Given that Prairie View was an all-Black college at the time, there loomed a racial component to this battle, for, not surprisingly, all the elected officials were white. In my initial attack, I raised the racial argument, but after a brief exposure to Judge Noel, I withdrew the claim. It was abundantly clear from the court's behavior that he would rule against that claim and exonerate Symm and the county from any racial bias. I ended up trying the case on the limited theory that the Texas statute unconstitutionally burdened students' voting rights. Judge Noel had been so hostile in our early hearings that I knew I was destined to lose in front of him, but I hoped that I could straighten it out on appeal. Noel was much too crafty to give me that opportunity. He not only upheld the constitutionality of the law and validated Symm's program but went the further step and found that none of

my clients were residents of Waller County. This gratuitous fact-finding, as he knew, made an appeal fruitless, for if the students were not residents, they suffered no harm by being denied the right to vote.

I failed to properly take into account Judge Noel's hostility to the idea of Prairie View students voting. On the other hand, he probably didn't adequately take into account my stubbornness when I'm pissed. When I got the ruling from Noel, I realized that there was more than one way to skin a cat. I got John Duncan of the Texas Civil Liberties Union to find some student plaintiffs in the Eastern District of Texas in Judge Justice's turf. In short order, he located some students at North Texas State University in Denton who were having difficulty registering to vote. A new suit was filed, again challenging the constitutionality of the Texas law limiting students' right to vote. The fact that Judge Noel had found it constitutional was in no way binding on another federal trial court. The case styled *Whatley v. Clark* named not only the Denton County tax assessor as a defendant but also Bob Bullock as secretary of state and the state's chief election officer.

The naming of Bullock proved most felicitous. I didn't really know Bullock in those years, but I did know quite well his chief of elections, Buck Wood. Through him, I was reasonably assured that Bullock would be receptive to a lawsuit challenging the election code provision that restricted student voting. Our claim was that the presumption against student residency violated the Constitution's equal protection clause. At that time, the constitutional test applied to voting issues had become quite favorable to plaintiffs. Any state restrictions on the exercise of the right to vote must be justified by a compelling state interest, which placed a relatively heavy burden of proof on the state under any circumstances.

Any chance the state might have had to meet its burden ended abruptly with the deposition of Secretary of State Bullock. Bullock, to the total dismay of the attorney general's office, testified:

> Q: In terms of your position as State Chief Election Officer, can you tell us what interest of the State, if any, is served by the special classification of students and special tests of residency that are therein imposed, if you know of any?
>
> A: Well, it has been my position, to tell you the truth, that it is a special classification, number one; and I have yet to find a compelling state reason, as far as I am concerned, and this office is concerned, for that requirement. . . .
>
> Q: All right, sir. In your position as State Chief Election Officer is there any administrative reason, that is, within the state registration processes, that require[s] a special treatment of students, as you see it?
>
> A: No. In fact, quite to the contrary. I think it imposes a burden on the County Clerks throughout Texas the way it is under our present system. . . .
>
> Q: Based on your experience and your observation, what is your opinion as to the reason for this special treatment of students in Article 5.08? . . .
>
> A: . . . If I recall, it was part and parcel of an act which was passed in 1967, I believe, and in my opinion, based upon the makeup of the Legislature at that time, a rather conservative one, I think it was placed in there, to be very honest about it, to discourage students from voting.

I came to know Bob Bullock reasonably well during his years as comptroller and lieutenant governor. He was a complex and sometimes difficult figure, but if he was on your side, there was no doubt where he stood. I don't know whether Bullock was on my side in this lawsuit because of the merits of my claim or because of some personal pique. Whatever the reason, his testimony

destroyed the state's case.

In 1972, Judge Justice duly declared the statute unconstitutional. The state, as was its wont, pursued unsuccessful appeals to the Fifth Circuit and the U.S. Supreme Court. The state's appeal was supported by an amicus curiae brief on behalf of Travis County residents who alleged that their "voting power . . . will be diluted and their civil rights impaired" if students were allowed to vote in Travis County. This plea fell on deaf ears, as the Fifth Circuit affirmed Judge Justice in an opinion authored by former Austin Congressman Homer Thornberry. The court's opinion rejected the state's claim that the limit on student voting "preserves the purity of the ballot" by acknowledging Bullock's testimony: "one of the original named defendants, . . . former Secretary of State Robert Bullock, testifying as the state's chief election officer, stated unequivocally that Article 5.08(k) created a special classification that served no purpose other than to discourage students from voting." So, as in so many instances, Bullock got the final say on this issue.

While the *Whatley* case and the Waller County problems percolated, another hurdle had arisen affecting voting rights of the young. The Texas legislature was distraught at the prospect of having to suffer barefoot hippies at the polls. In response to the Twenty-sixth Amendment and the eighteen-year-old vote, the legislature in 1971 took another whack at limiting voting by adding a new statutory provision restricting voting by those under twenty-one years of age. The article (5.08 m) provided that "the residence of a person under 21 years of age who is not married . . . is at the place of residence of the parent or parents . . . having custody of the minor." From today's vantage, one must wonder how the Texas legislature could be stampeded into passing such a piece of foolishness. It can only be explained by the tenor of the times: the specter of young people in revolt dominated the media, and the establishment felt threatened. Legislation of this nature was a predictable and historical response. I filed suit again in the Eastern District before Judge Justice with an ACLU plaintiff. The statute was promptly declared unconstitutional in a case called *Ownby v. Dies*. In this instance, the statute was so rank that even the Texas attorney general was willing to let it go peacefully to its grave without the customary appeal.

Although grumbling continued, Judge Justice's rulings in *Whatley* and *Ownby* put to rest the issue of student voters everywhere in Texas but Waller County. Tax Assessor Symm remained unyielding. I had hoped that I could somehow bring him in front of Judge Justice by converting the court's declaratory judgment to a statewide reach. Those hopes were dashed by intervening developments. A Houston attorney, outraged by the Prairie View situation, decided to take another run at Symm in the Houston federal courts. My warnings to him about Judge Noel fell on deaf ears.

The new case, *Ballas v. Symm*, ended up back in front of Judge Noel. He was even more outrageous this time around. For whatever reason, the issue of Prairie View students voting sent the judge off his skids. He was presented with Judge Justice's ruling in *Whatley*, along with the testimony of Secretary of State Bullock, as well as a ruling by Bullock that condemned the Symm questionnaire. Noel's forty-page opinion pretty well excoriated everyone. He took his first shot at the plaintiff's attorney, noting that he was "young, inexperienced." He next noted the deficiencies in Judge Justice's *Whatley* opinion: "It is obvious that the Judge in Whatley had some reservation about such apparent lack of state interest. It would appear that in Whatley the court

was without assistance or enlightenment from counsel on the law in this regard. . . . Confronted as he was with the contentions of defendants and the Bullock testimony, it is not surprising that the busy Whatley court was led into the result reached in Whatley."

Noel then turned his attention to Bullock:

> Whatley was decided October 1, 1972. On October 3, the Secretary of State of Texas, as Chief Election Officer (Mr. Bullock), issued a bulletin which advised that "No county registrar may require any affidavits or questionnaires in addition to the information required on the application for a voter registration or certificate," citing as authority *Whatley v. Clark.*

Judge Noel was obviously furious. He held that the "Secretary's bulletin is clearly erroneous." Then, as his dander got really up, Judge Noel ruled that the Bullock interpretation of the election code was "utterly lacking in candor or credibility; legally incorrect; misleading; in excess of his statutory authority; and irrelevant." Noel went on, of course, to uphold the constitutionality of the student prohibition. In the process, he found no racial bias in Symm's actions, because they were directed against students, not Negroes, and it was merely accidental that all of the Prairie View students were Black. Before he quit, the court took a swat at Eristus Sams, who had been trying to lead a voter registration drive on campus. Noel concluded that "Deputy Registrar Sams [acted] in patent violation of the statutes and procedures" governing voter registration. Despite the venomous nature of the opinion, it was done in a sufficiently crafty manner to make it virtually unassailable on appeal.

This is where the system can truly break down, for, even after *Whatley* was affirmed by the Fifth Circuit and by the U.S. Supreme Court, Judge Noel still had control of the Waller County issue. Students were registering everywhere else in Texas without difficulty, except at Prairie View. By 1975, everyone suddenly became concerned about Symm and the Prairie View students. Mark White, as secretary of state, issued a directive to Symm ordering him to cease using his student questionnaire, on which Symm relied to deny registration. John Hill, then attorney general of Texas, was threatening to sue Symm. Finally, in 1976, the U.S. Department of Justice sued, claiming that Symm's use of his questionnaire directed against students was a violation of the Twenty-sixth Amendment. None of these threats altered the exclusion of the students, as Symm sat behind the protective umbrella of Judge Noel.

I decided to take another line of attack on the county. It was apparent that in redistricting the commissioners' seats in Waller, the commissioners court did not take into account the student population; the result was a serious abuse of the one-person, one-vote principle. Students were counted as Waller residents by the census and had to be taken into account in fashioning county commissioner election districts. Suit was filed on behalf of Eristus Sams, alleging the precinct lines violated the Constitution. The case was filed in June of 1975, and the commissioners immediately redistricted their precincts in response, but did nothing to address the disparity-of-population issue. It made no difference, because, despite the fact that there were a half-dozen perfectly rational federal judges sitting in Houston, I was again assigned to Judge Noel. This time he took a different approach. He simply refused to hear the case, and we languished on the docket. I was finally able to force the county to submit the new precinct lines to the Justice Department for clearance under the recently expanded Voting Rights Act. In July 1976, the Justice Department objected to the commission districts, because the "plan excludes a significant

portion of the potential Black voters of Waller . . . Further, since the population of the only Black majority district is an estimated 2,000 more than the other districts . . . the Black residents . . . are underrepresented"—a clean victory but it still needed court action to implement the ruling. We were entitled as a matter of law to a three-judge court to act on the claim, but the request for the appointment of the three-judge court had to be forwarded by Judge Noel, and he still just sat on the matter.

Sometimes it takes a while for the system to grind these matters out, and the federal judiciary is notoriously reluctant to interfere with a trial judge's handling of his or her docket. On the other hand, the judiciary is not powerless; it simply prefers indirection. In 1977, Finis Cowan was appointed to the Houston district bench by Jimmy Carter. Out of the blue one day, the following order hit my desk: "Pursuant to work division order of Chief Judge Reynaldo G. Garza, entered June 30, 1977, this case is transferred from the docket of Judge James N. Noel to the docket of Judge Finis E. Cowan." This was no mere happenstance. Obviously, the judiciary was fed up with Noel's handling of his civil rights docket, so he didn't have one any longer. Ours was by no means the only case reassigned, and the transfer orders effectively ended Judge Noel's blockade.

In short order, under Judge Cowan's prodding, the Waller issues resolved. A three-judge court, including Judges Cowan and Woodrow Seals, held the Symm questionnaire and Symm's refusal to register students violated the Twenty-sixth Amendment. The opening sentence of that opinion was particularly satisfying: "The case which controls this controversy is *Whatley v. Clark* . . . that case holds that the statutory presumption of nonresidency . . . is unconstitutional." Judge Justice and Bob Bullock were vindicated, and I got my revenge. The county promptly settled with Sams and me, redrew the commissioner precinct lines to draw a Black-dominated commissioner seat, and paid me some attorney fees. Untold hours of judicial time and lawyers' efforts were expended in the battle. The bitter irony is that it was probably for naught. Before we knew it, the housing market wiped out our victory. Houston suburbs mushroomed into Waller, the rural county disappeared into subdivisions, and the voting strength of Prairie View students got swallowed by suburbanites. It was a righteous battle, even if the victory proved Pyrrhic.

17
Redistricting East Texas in the 1970s

THREE BLACK MEN from deep East Texas are prime motivators for this writing project. Rightly or wrongly, I felt they and their unwavering pursuit of Black voting rights might pass totally from view, retrievable only in musty legal files. These men were middle-aged when I first met them in the 1970s. They were Arthur Weaver of Nacogdoches, Inez Tims of Lufkin, and Frank Robinson of Palestine. Along with Eristus Sams of Waller, they each held an indomitable conviction that the vote would ultimately empower southern Blacks. Although they shared this view, I am not sure if they even really knew one another. Black Progressive Voters Leagues existed in most East Texas counties, and all four men were active in those groups. These men were mighty figures in their own communities, but those communities were Black and largely isolated. Each of them repeatedly challenged the dominant white power structure of their hometowns. They lived in a totally segregated society, and to attack that social order from within required remarkable courage. In the case of Frank Robinson, it may well have cost him his life. Only Arthur Weaver, at eighty-four, is still alive at this writing. He was recently quoted in an article in *The Nation* about Judge Justice: "He was the onliest judge we ever went to in federal court. . . . He said things I never heard a white person say . . . equal education and equal housing and the right to vote."

After the success in *Regester*, it suddenly seemed possible to significantly increase the number of Black officeholders in the state. Given the fact that there were virtually none, any increase would be noteworthy. The simplest line of attack appeared to be on county commissioner seats. By law, those offices were already being elected from individual districts, so there would be no need of complicated proof. All that needed to be done was to force redrawing of those districts to create at least one minority commissioner seat in the targeted counties. In 1974 there were no Black county officials anywhere in the state. Indeed, there had been no Black county officeholders during the twentieth century. The logical focus was East Texas, which had the largest concentrations of Black population.

Remembering the lessons of proper forum selection, that is, file where you can expect a sympathetic court, I identified all the counties in the Tyler Division of the Eastern District of Texas. Judge Justice was still the only sitting federal judge in the Tyler Division. Dan Weiser checked census figures and gave me the names of those counties that had at least 25 percent Black population. We figured that in any such county, a majority Black commissioner's precinct could probably be drawn.

All we needed were plaintiffs in the chosen counties and a little expense money. Roy Evans, president of the Texas AFL-CIO, agreed to put up some funding. Plaintiffs were no problem. Two Black friends, Paul Ragsdale and Johnnie Henderson of the AFL-CIO, were eager to help locate Black plaintiffs. Paul, then recently elected to the legislature from Dallas, had East Texas roots, and Johnnie worked the area for the union. Before we were through, Paul had created his East Texas Project, which ultimately targeted about two dozen

counties for litigation. But at the outset, we confined ourselves to the Tyler area.

By 1970, I had some experience in urban Black communities through both politics and the labor movement. I was not prepared, however, for the isolation of the Black communities in rural East Texas. By that time, formal school segregation was mostly at an end, but the society at large remained totally segregated, and Black citizens had few contacts outside their minority world. Local officeholders were either hostile or remote and dealt with the Black community, if at all, through Black preachers. Black jobs were traditionally menial, and Black professionals were virtually nonexistent. I had been spoiled in the big city by having resources available to assist me in preparing my other lawsuits, but there were no Dan Weisers in East Texas. My local contacts had no reliable records on past elections, voting precincts, or county commissioner district configuration. Everything was done pretty much in the oral tradition. Local officialdom was reluctant to supply information, either to me or to my local Black contacts. Although state law required the filing of county precinct maps with the secretary of state, it was seldom done in the rural counties. I was flying blind to a large degree, but it didn't take any great wisdom to sense that the local Black community was frozen out of the political process.

In the fall of 1973, suits were filed against a half-dozen counties alleging constitutional denials of the right to vote. Although information was sketchy, most of these counties had never adequately addressed the Supreme Court mandate of one person, one vote. Some of the counties were still apportioning commissioner precincts on the basis of county road mileage or voter registration data. In truth, in these years, census data in rural areas were not easily usable, and many local officials just made their best estimates of population. Although perhaps understandable, such practices were not constitutionally defensible. The tactical theory was simple: knock out the existing commissioner precincts and try to get a court-ordered plan that was more favorable to the Black community.

The filing of these cases proved to be one more example of letting my mouth overload my butt, as we used to say. Judge Justice was not one to sit idle, and he immediately set hearings on Nacogdoches and Anderson Counties, two of the largest counties we had sued. I knew little about these counties and had no reliable data on the population distribution between the commission precincts. Population was counted by the census in what it called enumeration districts, and official census documents reported population on that basis. Unfortunately, the enumeration districts seldom conformed to any locally significant boundaries, and voting precinct lines almost never tracked census districts. As a result, it was impossible to accurately determine the population of any of the commissioner districts we challenged. Again, lady luck sort of showed up on our side, for it turned out that neither Anderson nor Nacogdoches had ever bothered to redraw their county commission districts on the basis of the 1970 census. This fact alone cast serious doubts upon the legitimacy of the districts.

Voting lawsuits require some sort of expert witness, someone who can get on the stand and plausibly testify about census data, make estimates of population figures, and sponsor proposed redistricting plans. In those years, few such types existed on the plaintiffs' side. We didn't have the money to hire professional experts, as this was a totally shirttail operation. My expert became Jim Cline, Representative Paul Ragsdale's administrative aide. In the fairly strange world of Austin in those years, Cline was about the strangest-looking

person to be found. He resembled an emaciated Ichabod Crane, with his long stringy hair, scraggly goatee, and disheveled clothes. Jim knitted as a pastime, and his ensemble typically included a knit cap and a knitted over-the-shoulder bag. He was a refugee from Dallas who had broken out with a vengeance. When he first arrived in Austin, he lived in a tent on Red Bud Isle at the head of Town Lake. By this time, he had graduated to a dilapidated rent house. Jim's expert credentials were founded on the fact that he held an engineering degree and training in math and statistics. In his other life, he had been an up-and-coming professional with Texas Instruments in Dallas, living in that quintessential suburb of Richardson. Jim attributed his transformation to what he euphemistically called "wiggly cigarettes." He had begun to question some of the values of suburban life, and as an act of rebellion, he ceased mowing his grass and let the yard go to weed. His neighbors went bonkers, his wife found his stash, and he was shortly on the road to Austin, respectability left far behind. We had grand times, especially once we recognized that we didn't know what we were doing and were going to have to ride it through.

My pleadings had routinely asked for preliminary injunctions to prevent the holding of the May 1974 primaries, pending the outcome of our constitutional attack. Judge Justice set hearings in Tyler for late January on the injunctions for Nacogdoches and Anderson Counties. This was a big deal in these communities, and my lead plaintiffs, Arthur Weaver and Frank Robinson, were ecstatic. For years they had fruitlessly beseeched the local government to pay attention to the needs of the Black population. Black citizens were perceived as powerless, and their complaints about inadequate services, law enforcement abuse, and lack of representation had fallen on deaf ears. For my clients, the fact that "the man" was going to have to show up in front of Judge Justice was almost a victory in itself. Wayne Justice was perceived by white East Texas as heretical, a native son who had turned on tradition and who threatened the underpinnings of the social order—all the better for our purposes.

Our first hearing set the tone, and it is etched permanently in my mind. Our obligation at the preliminary stage was to make enough of a showing to indicate we would likely win at final trial. Nacogdoches County was first up. I called Jim Cline as my witness to show the malapportionment of the commissioner districts. He had made no special effort with his appearance for the occasion. He had managed a "goodwill" coat and tie, but he still looked like a street freak. County officialdom was arrayed on the front row of the courtroom, their big Stetsons piled on the bench behind and their red necks bulged over their unaccustomed shirts and ties. With Arthur Weaver beside me, and his Black supporters strung out behind us, we had set in perfect juxtaposition the forces at play in that era of change.

I truly felt that I could get into the minds of our opponents as they sat there. All the evils they had heard about and feared were suddenly thrust into their lives: a liberal federal judge, a pot-smoking hippie, and disgruntled Black people. Every time our side made any point whatsoever, a chorus of "Amens" arose from my claque, sending shivers through my opponents. Cline was a first-rate witness; the county really had no defense. Judge Justice postponed the filing deadlines for county commissioner and froze the election process, pending trial on the merits a month hence. We repeated the show the next day in Anderson County, with the same result.

Trial of the Nacogdoches case was straightforward. No one could seriously claim that the existing districts satisfied one-person, one-vote standards. The

difficulty was trying to figure out where people lived so we could draw four legitimate commissioner precincts, one with a Black majority. Using census tracts, Cline and I finally came up with a proposed plan that satisfied the court, and Judge Justice ordered it into effect for the upcoming May 1974 primary. We had managed to create a Black majority commissioner precinct. Arthur Weaver pushed a Black minister, Amos Henderson, into filing for office. Arthur was shrewd enough to realize that he himself was probably too controversial—even for the Black population—to be a successful candidate. Incumbent commissioners were quoted in the press condemning the plan as "gerrymandering" to benefit Blacks. Amos Henderson was also quoted in the Houston Post: "The whites-only tradition of local government is just the old custom . . . from way back in slaveryism." He opined that it should have been changed a long time ago. Henderson did, in fact, change things, becoming Texas's first elected Black county official of the twentieth century.

In truth, Nacogdoches County seemed to take it all in stride; the county took the obligatory unsuccessful appeal to the Fifth Circuit but moved forward with the election process without incident. The only problem came in trying to locate on the ground the commissioner precincts of the court-ordered plan, which was based on census enumeration districts. Unfortunately, those lines in Nacogdoches ran along boundaries such as Tuscosso Creek, Legg Creek, and Naconiche Creek. Shortly before the election, I got a call from the desperate county attorney, a very decent guy named Tom Senff. He explained that he didn't want to get in trouble with Judge Justice and the county was doing everything it could to follow the court's order. He said he and the county surveyor had been crawling through the underbrush looking for creek bottoms, but they couldn't locate them all, so they didn't know where to put the precinct line. I urged him to do the best they could at approximating, and I wouldn't complain to the court. It worked fine for the first election, producing a Henderson victory.

Four years later, I got a call from the new county attorney of Nacogdoches. He was most polite but clearly worried. He explained that Amos Henderson had been a fine county commissioner and everyone liked him. A problem had come up, though. During his term, Henderson had built a new house a short distance from his old residence and had moved into the new dwelling. Unfortunately, everyone had just realized that Henderson had inadvertently moved just across the line into the neighboring county commission precinct and was not going to be eligible to run for reelection. He, too, did not want to have trouble with Judge Justice. He explained that another Black citizen had filed for Henderson's old seat, but they were going to have to tell Henderson he was ineligible. I assured him that if he was on the up and up, he would have no trouble from me; I couldn't control where people decided to move. There ended the political career of the state's first Black county official.

Before the year was out, Arthur Weaver had me back in Nacogdoches, but first things first: Anderson County. The Anderson County litigation was much more bitterly fought. The county hired outside attorneys and pulled out all the stops. In fact, the evidence on Anderson was much stronger than in Nacogdoches and provided an insight into the workings of the community. There was a reasonably active Black political group within the county that functioned largely through the Black churches. In one of my early visits, I learned a piece of fascinating local political lore. The city of Palestine had recently voted itself "wet," to the consternation of the white religious leaders

who vigorously opposed alcohol sales. To my surprise, I learned that the Black ministers had supported the wet side and that Black votes were probably instrumental in passage of the proposition. The explanation for this strange voting behavior was deceptively simple. The Black community was sick and tired of all the bootleggers running their operations in the Black neighborhoods, where local law enforcement wouldn't bother them. Legitimizing alcohol sales, they reasoned, would drive the bootleggers out of business and, in the words of one of the ministers, allow the white neighborhoods to have the pleasure of alcohol sales on their side of town. Despite the success of this particular stratagem, Black interests were still treated with disdain by local officialdom.

The trial court findings reflect some of these issues. The all-white commissioners, over the protests of Black leaders, had appointed as county juvenile officer a former deputy sheriff who had been forced to resign because of brutality charges stemming from his shooting of a Black resident. More mundane but also indicative, the commissioners had abolished the office of the Black home demonstration agent without even conferring with the Black community. These are the kinds of issues that animate rural communities. More significant to the law, the commissioners' 1969 realignment of county commission lines had drawn a wedge through the heart of the Black neighborhood. The effect of this wedge was to divide the Black voters into three separate commission districts and, from the court's view, dilute Black voting strength. Judge Justice ordered our plan into effect for the 1974 elections. The county mounted a full-court press on appeal, seeking stay of the order in the Fifth Circuit and appealing to the governor and attorney general for intercession—all to no avail. The election was held under Judge Justice's order, but Frank Robinson, the Black candidate, lost in the primary to a white opponent.

The Anderson appeal went forward even after the election, and I learned a little lesson about the functioning of the system. Much of the inner workings of the appellate courts remains a mystery to the practitioner. How are judges assigned to appellate panels? Who decides which of the three judges will write an opinion in a given case? How is scheduling decided? I received notice in the mail that the Anderson County case was to be argued on a date and time in New Orleans. The notice didn't advise who were to be the members of your court, and in those years, you didn't know until you walked into the courtroom. The argument conflicted with a trial setting I had before Judge Sarah Hughes in a sticky labor case, and I felt I had firmly committed to that trial date. I requested the Fifth Circuit to reschedule in light of the conflict. Within hours, I received a call from Judge Hughes's secretary. She explained that they had been called by Judge Goldberg's office, concerned that I was asking to reschedule the Anderson County case. She made it very clear that Judge Hughes had no interest in holding me to the trial setting in light of Judge Goldberg's interest. So the trial setting before Judge Hughes was changed, and the Anderson case was later argued before a panel that included Judge Goldberg. He wrote the opinion for the court, affirming Judge Justice in what became a landmark opinion on minority voting rights and racial gerrymandering, concluding, among other points, that the trifurcation of the minority community unconstitutionally diluted the Black vote. It was obvious that the case had already been shipped out to his panel when my postponement request hit. Judge Goldberg had become familiar with the case and didn't want

to lose the opportunity to hear the case; rescheduling would have shipped it off to another panel. I assume he simply called his old friend Sarah Hughes and addressed the matter—nothing inappropriate, just resolving scheduling conflicts. The Anderson litigation produced a satisfying legal victory, but I found myself back in the county within the year on a most tragic matter.

Once Arthur Weaver found me, I became his constant correspondent about the ills of Nacogdoches. Arthur had a small grocery store on Butt Street in the heart of Black Nacogdoches. It must have doubled as a community center, for Arthur seemed to know of every injustice that occurred in the county. He wrote everyone he could think of about the wrongs around him, and they were plentiful. There was simply no way that I could, from Austin, feasibly address every new outrage. I did get lured back for another election matter. In the spring of 1975, two students, one of them Black, filed for election to the Nacogdoches City Council. The student vote at Stephen F. Austin University was sufficient to propel them into a runoff with establishment candidates. Horror prevailed. The city council met and modified the city charter to reschedule the runoff election to a date when Stephen F. Austin students would be away on summer recess. At Arthur Weaver's behest, I filed suit to force the runoff election to be held on the originally scheduled date when the students would be in town. I persuaded Judge Justice to order the runoff election on the original date, but the city was able to obtain a ruling from the Fifth Circuit to set aside Judge Justice's order. The runoff was held on the new date. The students were gone, the student candidates lost, and order was preserved. Weaver and I were pretty frustrated and decided to stay after the city. I filed new pleadings and converted the case to a single-member-district case, seeking conversion of the at-large city council to individual district elections. It took a little longer, but Arthur and I ultimately prevailed and managed to create a Black city council seat for Nacogdoches and make possible the election of a Black to the city council. None of this stuff came easily. Exhausted from driving back and forth, I was ready to retire from East Texas matters.

Sadly, it was not so simple. In 1976 I received a call from Dorothy Robinson, Frank's wife, to report that he had been found shot to death in their garage. She and others in the Black community were outraged that the county officials wanted to label it as suicide. I learned that Frank's loss of the county commissioner election had not squelched him, for he, with the aid of Larry Daves, had filed another suit, this time to require that the Palestine City Council be elected from individual districts. Larry Daves was a courageous lawyer who had opened a law office in Tyler and was knee-deep in East Texas civil rights issues. Larry and Frank had won their case against the city less than two weeks before Frank's death. It seemed mighty strange that Frank would commit suicide at a time when he was fresh from his recent victory.

Mrs. Robinson and some of Frank's friends wanted to hire me to fight any attempt to label the death as self-inflicted. The only other possible explanation was murder, with all the markings of a Klan execution, as Frank's head had been blown off by a shotgun blast. I felt quite helpless; I did not have the resources, I thought, to do an adequate job on such a touchy issue. Nonetheless, something had to be done, and I was the logical lawyer to undertake it. I told them I wouldn't accept a fee but would take some expense money to come over and see what I could do. The upshot was an almost unheard-of proceeding: an inquest tried before a jury in Anderson County, the issue presented being the cause of death. There was no evidence to support the

suicide theory, no notes, no indication of despondency or health problems. Yet the power structure apparently could not live with the murder alternative and were committed to the suicide rationale. The trial was so painful and the atmosphere so tense that much of it is blotted from my mind. The physical evidence was the shotgun found beside his body, a gun that did belong to Robinson. One shot had been fired into the garage wall, and the second killed him. Some shrink came over from the Rusk State Hospital and opined that it looked like suicide to him. But there did not appear to be any plausible basis for his conclusion. I managed to locate two young white schoolchildren who had been in the schoolyard near Frank's house at about the time of his death. They testified to seeing a van, unidentified, in his driveway and a long-haired stranger going into Frank's house. I thought it remarkable that they came forward to testify and that their parents were so honorable as to allow it, given the community tension. Nonetheless, the steamroller was on the road, and the jury ultimately came back with a suicide verdict, and there the matter ended. It has haunted me, and Frank's family and friends, ever since.

My final foray into East Texas voting was to Lufkin and Angelina County. For years I had heard people speak of Inez Tims with a touch of reverence. Once I met him, I knew why. Tall and dignified, he had worked all his life as a common laborer at the Lufkin foundry. In those years, Black workers were never allowed to progress beyond the labor grade. It was totally accepted practice throughout southern industry that Blacks were confined to the lowest level of employment. Inez ruefully described how he had trained generations of white employees and watched them move up the classification and wage scale, leaving him behind. By the time of the passage of the Civil Rights Act of 1964, Inez was near retirement age. He reported with a touch of humor that the company had come to him and asked that he take a promotion, a transparent attempt to improve the company profile under the new law. Inez had accepted the promotion with some reluctance and had thus become the first Black to move out of the common laborer classification. Remarkably, he displayed no anger at this lifetime of discriminatory treatment.

His passion was reserved for politics, and he had established himself as a force in the county. Angelina, unlike any other East Texas county I had seen, had a tradition of white progressives serving in public office, including, among others, John Hannah, a former secretary of state of Texas, and Congressman Charlie Wilson. Despite the fact that Inez had access to officialdom, there still had been no Black officeholders in the city or county, and local governments were largely inaccessible. With Inez's assistance, suits were filed attacking the county commission seats and the at-large election of the Lufkin City Council. The county commission suit resolved quite easily, and we shortly created a predominantly Black seat; subsequently, a Black county commissioner was elected. The city council issue was much more thorny.

Inez had made an earlier unsuccessful run for city council, the first and only Black candidate for any office in the city or the county. He had drawn enough votes to force a runoff election. The turnout in the runoff was the largest vote in the history of the city of Lufkin. In practical terms, such elections state the case for single-member districts or demonstrate the problems with at-large elections. The presence of the Black candidate brings white voters to the polls in droves. The majority white electorate sinks the Black candidate, as happened in Lufkin. Stated another way, local elections are a ho-hum deal until a minority candidate emerges. The case was heard before Judge Justice, who

fully understood the implications, from both a practical and a legal view. Our theory of attack was, after all, based on the earlier *Regester* legislative case, in which Judge Justice had co-authored the majority opinion.

One of the elements of proof in these cases is to establish polarization of the vote, which means that white voters overwhelmingly vote for white candidates, and minority voters for minority candidates. Pretty obviously, if white voters routinely support minority candidates, it is difficult to argue that the at-large system disadvantages the minority community. Normally, this proof is relatively easy. Given residential segregation, it is simple to find voting precincts that are overwhelmingly white and then to look at the election returns from those precincts to see how they voted in races pitting white candidates against minority office seekers. In Dallas, for example, when we first tried *Regester*, the white precincts typically voted in the 90 percent range for the white candidate, showing conclusively the polarization factor. In Lufkin, there was but a single voting precinct, and all voters, Black and white, voted at one polling place. Thus, there were no election returns to differentiate voter behavior. I initially despaired of being able to prove polarization, but Inez was prepared. I don't know whether it was enormous perception or just great good fortune, but Inez had his supporters at the polling place for the runoff. They hand-counted every Black voter who went to the polls; Inez still had the crumpled tally sheets. He had received 1,653 votes in the runoff, and 1,650 Blacks had voted. Judge Justice had no trouble finding that this evidence showed strong voting cohesion in the Black voters and polarization in the white bloc, and he ordered individual districts for Lufkin city elections.

Nonetheless, it took years of litigating before we finally won. The city managed a successful appeal to the Fifth Circuit, which sent the case back for further hearings before Judge Justice. Whether it was the prospect of retrial or simply the softening of attitudes, something persuaded the city fathers to settle up and get Inez and me out of their hair. A single-member-district election plan was put into effect, and shortly thereafter, Lufkin had its first Black city council member.

My final encounter with Inez was a year or so after the lawsuits had ended. He was by now retired from the foundry and had gone to work for Congressman Charlie Wilson as his local liaison. I saw Inez in the post office in the congressman's local office dressed in a suit, sitting behind a big desk dealing with constituent inquiries. While I was there, Inez was listening to the concerns of a white farmer in his dealings with the Department of Agriculture. What a change from his labor job in the foundry! And what a bold and right thing for Charlie to do. God knows, good-time Charlie Wilson had a multitude of flaws, most well documented. Not only was Charlie something of a tosspot, he also had the male politician's penchant for beautiful young ladies. In his later years in Congress, Charlie almost single-handedly managed to force our government to provide stinger missiles to Afghani rebels, an error that still haunts us. Nonetheless, all is forgiven. By demonstrating his respect for Inez Tims, Charlie put to rest the racism that had dogged Inez all his life. He was finally given the dignity that his character and bearing had so long entitled him to. Here's a toast to shibboleth breakers like Charlie. May their number ever increase.

18
Mad Dog Memories

AS THIS IS BEING WRITTEN, I am far removed from Austin in a place called California. I assume there are robust souls to be found here, but they don't seem much in evidence. Perhaps it's the times. I was back in Austin some months ago and ran into Jerry Jeff Walker having morning coffee. We fell into a reverie about the bygone days. Here on the West Coast, I would probably have to tell people who Jerry Jeff is or, for that matter, who Guy Clark is. I might even have to tell them who Rambling Jack Elliott is, and he just lives up the road. Jerry Jeff's theme of the morning was that he is a very stable person, had lived in the same house for eighteen years, and had been married to the same woman for sixteen years. He kept repeating, "I am a very stable person." I made only modest qualifications, suggesting that probably he had not always presented that picture. This litany of stability proved to be only the opening gambit.

He explained the problem along these lines. Despite his current stability, he bore the mark of those years (roughly the 1970s) when his life was so crazed that his self-perception is still overwhelmed by the intensity of that antic decade, whose impact no amount of current stability could erase. Thus, it was necessary to continually remind himself of his basic stability. I believe this was his thesis, and it certainly resonated with me. Some weeks later I was chatting with the writer Gary Cartwright, whose own escapades could place him in a competitive class with Jerry Jeff. I mentioned my rap with Jerry Jeff and asked if he had heard similar ruminations. No, but they had had a discussion that was a variant on the theme. He and J.J. were pondering why it was, now that they were in their sixties, that they felt so young. They concluded that they had clocked ten years or so that were mostly oblivion, a time of stasis. They did not materially age during that period. As a result, they felt ten years younger than their chronology would dictate. I fear sometimes I suffer from the same inability to accept the aging process.

There was such a time, a sort of magical moment, in Austin. One can make out its beginnings, perhaps its fruition, and more clearly its decline. For lack of a better label, I've called it the Mad Dog years. Jay Milner's recent *Confessions of a Mad Dog* chronicles a goodly portion of the personalities and events that characterized the era. I am not going to try to rival his tour de force but rather will just add my own snippets of memories. I do know that there was released in Austin circa 1970 enormous energy and talent, not all devoted to sex, drugs, and rock and roll, although they *were* a major component.

I know that, for me, the span between 1969 and 1979 was a time of enormous activity. Looking back, I can't quite believe that so much was crammed into that decade. I presented a half-dozen U.S. Supreme Court arguments and was in the middle of dozens of voting rights and civil liberties cases and still somehow managed to practice enough conventional law to keep the law-firm doors open. Ann successfully ran a political campaign or two and organized her own successful run for county commissioner. In the midst of all of this, we were raising four children—possibly haphazardly—organizing

camping and canoeing ventures, and raising all manner of hell in the nighttime hours. What a time we had. Guy Clark has a line that "you can't have too much fun." We came damn close.

The ingredients for this moment were suddenly all in place. The radical/student movement had been around for a few years. The UT faculty had become chock full of aggressive intellects, recruited in large measure by John Silber, dean of Arts and Sciences. Then the music scene began to explode. Willie Nelson left Nashville, grew a beard, and fell right amidst the counterculture. Somehow it became all right for the shit kickers and the freaks to listen to music without getting into fistfights. Eddie Wilson conceived of Armadillo World Headquarters and got it up and running. Soap Creek Saloon put a freak softball team into the city league, and they began to pound up on the redneck softball tradition. Everything was possible.

As cautious as Sam and I were, we got caught up in the exuberance and bought an old house for an office. It was a grand, ugly Victorian on the corner of Seventh and Nueces. It had been built around the turn of the century by one of the members of the Butler Brick family and was constructed out of that yellowish brick that characterized so many of the old Austin mansions. We wanted to make it a headquarters for our old brand of progressive Democrats. In short order, the *Texas Observer* and the Texas Civil Liberties Union (TCLU) became our tenants, and there began ten years of intimate, daily contact between our office and the players moving through those outposts of liberalism. Our law office was simply Sam and me and our secretary, the talented and patient Leta Worthington, later Levbarg. Leta did everything—typed, kept our miserable books, and served as a receptionist. We overworked her unmercifully, and she finally had the good sense to move on. In this day and age of legal plants with staff running out the ears, we look pretty damn primitive, but we were righteous, and the Austin law practice in general still had a small-town flavor. The mega firms from Dallas and Houston had not yet opened their branches in the town; most lawyers sort of knew one another and got along. Thus, it was possible for operations like ours to survive.

The TCLU of that era included, from time to time, my old comrade Wayne Oakes, Marge Hershey, and later John Duncan and Dorothy Browne—all of whom became friends for life. Given the proximity of the TCLU, it was little wonder that I got the pick of the fun cases. Nor is it surprising that we managed to cook up interesting lawsuits; all we had to do was sit around and read the morning papers and concoct litigation. More than once, strong hints came from the attorney general's office that they perceived our operations as some kind of conspiratorial cabal.

The *Observer* just boiled over with stretched personalities. Ronnie Dugger was fairly withdrawn by this time, but a succession of editors provided ample stimulation: Greg Olds, Jim Hightower, Kaye Northcott, Molly Ivins, Rod Davis, and heaven knows how many others. The occupancy was short, given the demands of the job. With Molly's dog, Shit, ever in attendance, we were just one big dysfunctional family, hell-bent on raising hell.

The first of the events that might fall under the Mad Dog rubric was Gary Cartwright's marijuana indictment. He was doing public relations for Fagan Dickson, who had decided to take on Congressman Jake Pickle in a single-issue campaign—Get Out of Vietnam. Fagan, a longtime Austin lawyer and liberal Democrat, had been galvanized by the war issue to begin his quixotic campaign to unseat Pickle. Gary had just started his gig with Fagan when bad

karma befell him or, as we paranoids once thought, his politics got him fingered. A couple of hippies showed up at his Westlake doorstep one evening claiming to be lost. Gary invited them in. Before long, they were asking where they might score some weed. Ever the gracious host, and unable to help on that inquiry, he offered to give them a joint, and he did. They were narcs, of course. Possession of any amount of marijuana was a felony in those years, and an indictment soon followed. My partner, Sam Clinton, and Warren Burnett from Odessa volunteered to defend. Burnett was one of the state's premier trial lawyers and late-night bons vivants. I went over to the courthouse the day the trial opened and sat with Gary as the jury was selected. It was a great-looking panel—lots of hair and sandals, and it reeked of patchouli oil. When the district attorney asked if any on the panel believed that possession of marijuana should not be a crime, fully one-third of the prospective jurors put up their hands. The defendant was ecstatic and turned to me with a beaming smile. I had to deliver the crushing message that all of those jurors would be excused for cause, since a condition of service was a willingness to enforce the law. Once the freaks were excused, the jury panel was a much more solemn-looking crowd. Fortunately, the case mistried when Burnett attempted to qualify the jury on their willingness to reject unfair criminal laws and vote their convictions, irrespective of the law. The district attorney's office sought and secured the mistrial on the grounds of improper argument by Burnett. The charges were later dropped, as there was not that much interest in prosecuting Gary.

Perhaps it was this brush with the law that energized the Mad Dog movement into more aggressive activity. By aggressive, I mean moving to doing something in the daylight hours, rather than being confined to late-night schemes that wafted away with the sunrise. The prime movers were Gary and Bud Shrake, who had coined the motto of the group: Doing Indefinable Things for Mankind. At some point, I don't know why or when, I became what should laughingly be called the Mad Dog lawyer, which mainly meant I filed incorporation papers for the group. Bud Shrake printed letterhead, and this brought us to the next project: buying a town to house the Mad Dogs. Pretty clearly, Gary and Bud felt that if we owned a town, and perforce controlled the town's law enforcement, a sanctuary could be set up as a barrier against foolish laws, such as the state's drug laws. I received a call one day advising that the services of the Mad Dog attorney were required, and we were on our way to go buy the town of Sisterdale.

The notion of town buying had occupied a number of late-night planning sessions. We would get out the Texas map and scout for likely locations. On the way back from Big Bend one year, I had stopped at old Fort Shafter, which by then was abandoned. This was an early favorite, until everyone realized that it would take forever to get there and it was too far removed from the bright lights of Sixth Street. The name continued to percolate, however, and shortly there appeared on the literary scene a new writer—M. D. Shafter. His work, blessedly, seems to have vanished with the passage of time.

Sisterdale had been another town that caught our fancy; it was fairly close to Austin, and the Mad Dogs were very much into sisters. Pete Gent had been part of these planning sessions. Then newly retired from the Dallas Cowboys, and in the beginning of his writing career, Pete had both energy and time to devote to the town search. Lo and behold, Pete had been in touch with a real estate agent from Boerne and had a written offer in his hands to sell the bulk of Sisterdale. So off we went to Sisterdale to meet the real estate guy.

"We" included Jodie and Pete Gent, Gary, Bud, and I, along with a most improbable personage, a young man named Donald who was identified as the greeter from Elaine's restaurant in New York. Bud by now was a heavy hitter at *Sports Illustrated* and something of a fixture at the "in place" Elaine's. Somehow, as a result, Donald was part of our party. Donald had long red hair, which he wore down around his shoulders in a bouffant style. Now, this was a time when long hairs took their life in their hands when they left the city limits of Austin, particularly when traveling west. Nonetheless, off we went with an air of expectation. A great deal of forethought had gone into choosing appropriate roles in the new town. Gary wanted to be in charge of women's issues, Bud the druggist, and Pete the town marshal. Somehow these had all seemed to be real-world discussions. Pete's letter, which I read, was quite specific. We could buy the general store, the adjoining bar, and the attendant dance slab for $6,000. This was within Mad Dog buying range. I knew the property, for I had stopped in the old bar from time to time after camping and canoeing outings. It had a great mural describing how a group of utopian socialists had founded Sisterdale after fleeing Germany in the 1840s. It did strike me that the price seemed a bit low, even for that era. We were to meet the agent in the bar.

When we arrived, a couple of Hill Country ranchers were nursing their beers. Donald's appearance was enough to paralyze all the natives; they would not have been more shocked by the arrival of Martians. The real estate agent was in a black suit and, I swear, had on button-up black shoes. (Maybe it was the company I was in that gives me these bizarre memories, but that's the way I recall it.) Immediately, I knew that we should get Donald out of the bar before he caused any further shock waves. So Jodie and I took Donald for a stroll around Sisterdale, which consisted of about a half-dozen dwellings, and left the negotiations to Pete and Bud.

Shortly, Bud emerged from the bar with an expression on his face that teetered between befuddlement and bemusement. He reported that the agent's letter had omitted a zero. The price was $60,000, somewhat outside the Mad Dog range. Whether the extra zero appeared after one look at Donald is subject to historical debate. In all events, a crestfallen group of Dogs with tails between their legs headed back to Austin. Spirits were revived by a few joints and a couple of six-packs. By the time we reached Austin, the consensus was that responsibility for town management was probably not one of the Mad Dog strengths. At the time, I was an inveterate reader of newspapers. Within the week, I spotted a story in a San Antonio paper that lent credence to my supposition about the additional zero. A preacher in Kendall County (near where Sisterdale is located) had issued a warning throughout the area that hippies and dope smokers were trying to buy property in the area, and the good citizens should be alert. Luckily for "good citizens" everywhere, other nonprojects crowded their way onto the Mad Dog agenda, and town buying fell to the wayside.

How people come into your life is intriguing—the six degrees of separation sort of deal. My Dallas law partner Fred Weldon had brought Stan Alexander into our lives when we were in Dallas. Fred and Stan had been friends at UT when they were working on their graduate degrees in English. They had hung out at the old Threadgill's, where Stan had picked and sung with Janis Joplin in her early days. One of our great treats in those bleak Dallas years was a visit from Stan, who was by then teaching at North Texas State University in

Denton. He would bring along folksinger friends, and together they would entertain over many a grand evening. One of those he brought along on occasion was a young man named Eddie Wilson, who was one of his students. Once Ann and I made it to Austin, Eddie shortly appeared on the scene. He was lobbying for the beer industry, I believe, but he had too much energy for that to satisfy him.

Thus it was that Eddie, who is a genius and especially adroit at spewing and spinning ideas, came and grabbed us one day to show us his dream project. He had located an abandoned National Guard armory just across the Colorado River in south Austin. He was going to turn it into a music hall and capture the emerging Austin music scene. The place was vast, full of junk, and looked impossible to resurrect. We underestimated Eddie's determination and energy. Shortly, the Armadillo World Headquarters burst on the scene and became the embodiment of Austin funk of the 1970s. With Jim Franklin as resident artist and sometime master of ceremonies, the 'Dillo radiated a deranged quality that defied normalcy and attracted all sorts of people.

The astonishing thing was the wide acceptance of the Armadillo message. Here was a rock-and-roll joint peopled by stoned freaks and hippies that managed to achieve mainstream acceptance. The city of Austin ended up naming its shuttle bus service "the 'Dillo." The Lone Star beer company began a major promotion featuring Jim Franklin's Armadillo art. Armadillo was the kind of place that would regularly have been raided by the cops in an earlier era, and yet it became a chamber of commerce icon, one of the things you brag about in promotional materials.

All kinds of music came through the place. I saw such diverse performers as Bette Midler, Bill Malone, Ray Charles, and Commander Cody. The rise of redneck rock and the outlaw image was intimately associated with the Armadillo. Its opening somewhat coincided with Willie Nelson's return to Texas and the emergence of an anti-Nashville movement led by Nelson, Waylon Jennings, and Jerry Jeff Walker, among others. Although the state abhorred the lifestyles presented by the Armadillo and these musicians, the "don't give a shit" attitude they personified hit a responsive chord in the Texas psyche. Everyone seemed to share the sentiment from "London Homesick Blues" of wanting to "come home to the Armadillo." So a strange little snuffling nocturnal creature came to replace the longhorn as the state's favorite beast.

Armadillo was constantly having cash-flow problems. At one point, Eddie leased out special rooms to those who could afford it. The rooms were later eliminated in one of the constant remodels of the building. Mad Dog had a room for some months. I assume Shrake funded it, because he was the only one making any money. At one point, Eddie hit upon the idea of selling lifetime passes to Armadillo for $100, a lot of money in those years. Ann and I purchased ours and received laminated cards. They worked for a couple of months, and then the doorkeepers no longer recognized them. I suppose a month of Armadillo craziness seemed like a lifetime.

Eddie tried to engage me in representation of the music makers. He set up a meeting with the principals of Shiva's Headband, Austin's original acid-rock band. After two hours of conversation, I despaired. I never even understood what they wanted to do or how I was supposed to help. The lifestyle gulf was too great for a linear-thinking lawyer such as I. My last attempt to be of service came when Eddie called me to intercede on behalf of some avant-garde radio

types. A local entrepreneur had decided to redesign the format of his station to appeal to the youth culture. The station had hired a group from San Francisco to remake the image. On the second day, the new regime played a lengthy tape done by the Pacifica station in San Francisco. It included an interview with a mysterious writer named M. D. Shafter. The owner happened to catch that portion of the program and went nuts. He called the station and ordered "that filth" off the air and promptly fired all of the new arrivals. Eddie wanted me to save these worthies, and he brought them by the office with that purpose in mind. I explained that, there being no contract of employment, the owner was probably within his rights. I managed to get them a little traveling money, and that pretty much ended my legal efforts for the music world. It was a perfect Mad Dog irony. The portion of the tape that had so offended the radio-station owner was an interview with Gary Cartwright, masquerading as M. D. Shafter —Mad Dogs were everywhere.

Eddie's friendship was enduring. When Ann ran for county commissioner, he broke his long-standing vow against endorsing politicians and allowed me to hang an Ann Richards sign on the Armadillo. It was the first and only political sign allowed on the premises. It was one of the few signs I put up that survived the entire campaign and helped ensure Ann's status as the underground community's candidate. When our son Dan graduated from St. Stephens, a prep school in Austin, Eddie let Dan arrange to have the senior class picture taken atop the Armadillo.

The closing of the place left a major hole in Austin life, but those who kept it going had become exhausted with the effort. I got to be part of the final "grace saying" over the institution in a way that bespoke the changing times. Some diehards were trying to resurrect the club when developers proposed to raze the building and build some highfalutin project. To do so required a zoning change, and I was asked to go before the Austin City Council to speak in opposition. These were the days of the Carole McLellan/Rylander council that had turned the city over to developers. I got short shrift from the council. The developers assured that if they secured the zoning change, they would build a model structure surrounded by hike-and-bike trails and green spaces, and they displayed a mock-up of the project that showed all these wonders. The council routinely approved the change, and the Armadillo was torn down. Immediately, the developers announced that they didn't have the required funding to build the project they had described to the council. A crappy office building was built, and the rest of the old Armadillo land sat vacant for some twenty years. Not until the year 2000 was a residential hotel built on the land, minus hike-and-bike trails. One should always be wary of developer promises.

Among those who ran foul of the Mad Dog mentality was the actor Cliff Robertson. He had decided to make a cowboy/rodeo movie and somehow came across the names of Bud Shrake and Gary Cartwright. They both received telegrams from Robertson on April 1, 1970, asking if they would be available to write a rodeo screenplay. Both assumed it was an April Fools' joke and went back to bed; perhaps they should have "stood in bed." At some point, the telegrams were determined to be genuine. Bud and Gary met Robertson in Dallas so they could all go to the Mesquite rodeo and begin to get the flavor of the scene. Bud's deposition described the first evening:

Q: . . . while you were staying in Mesquite. What do you recall about that particular evening?

A: . . . There is a very good Mexican food restaurant in Dallas named Casa Domínguez, and so Cartwright and I wanted to take Robertson—Robertson said—We asked him if he liked Mexican food and he said, "Yes," and we said, "We'll take you to this—this is the best one in Dallas." . . . we said we'd like for some friends to come with us . . . Robertson said, "All right, but don't tell them who I am." He said, "I don't want anybody to know who I am and what I'm doing here. This has got to be a big secret." So we said, "Okay." So we called them up and we said, "Listen, you're liable to recognize the guy that we're with, but act like you don't recognize him. We'll introduce him under a different name," and so we met—we met Don Meredith, and I guess Don was with his wife Chigger at the time. I think that was who he was with, and Pete Gent and his wife, Jodie, and there may have been—may have been a couple of other people, and we introduced Robertson as Biff . . .—And, of course, they pretended all night that they didn't know who he was, but —

Q: So I take it that since he didn't want anybody to know who he was, you all didn't discuss what you all were doing in any detail or any—let the people who were in on the party know what was going on?

A: Well, everybody in the party knew what was going on exactly. We—much later on in the evening we went over to Gent's house and we all drank a lot of tequila, and, as I recall, there was some talk about the movie, and, of course, they knew who Robertson was anyway and—except—I do remember that Meredith called me aside and said, "Listen, I want to tell you something. That is not really Cliff Robertson," and since I wasn't sure what Cliff Robertson looked like, he made me doubt it myself for a minute.

After this Dallas run-through, a draft script was developed and sent to Robertson. He came to Austin to work on the script and stayed at Shrake's house out in Westlake. There he got a taste of Austin nightlife:

Q: Did you all go anywhere other than just at your house discussing the screenplay?

A: Yeah. Yeah we went to—We went to the Scholz Garten. We went to a party over at Eddie Wilson's house, Eddie Wilson who runs the Armadillo World Headquarters here. We went to—We went to the place where this girl Ruthie was living, and she was living with a fellow named Bill or Bob who had designed some kind of an incredible electric light show that—where you turned on—when you turned on the music the lights—all the lights in one big board changed colors according to the volume of the music.

To cap off the evening, Shrake got a call at three in the morning to tell him that the narcs were going to bust his house that night. The narcs didn't show, but the hullabaloo seemed to unsettle Robertson. The next morning he decided he had had about as much Austin fun as he could handle, and he returned to California. The visit did nothing to cement the relationship between the writers and Robertson.

Robertson was obviously troubled by his Austin experiences. When I got embroiled in the dispute some months later, Robertson's Los Angeles lawyer told me that Robertson had come back from Austin and reported that he had gotten caught up in a Manson-type gang. Shrake did nothing to put his mind at ease. I found one letter in Shrake's files, on Mad Dog Inc. stationery, addressed to Robertson's lawyer. The letter chastised Robertson for his perceived misdealings with Shrake and Cartwright and had attached to it a newspaper clipping with screaming headlines: "Police Believe Frozen Dog Weapon in Beating Death." Just to ensure that the message was clear, the letter included a warning, "Mad Dog on Prowl." Needless to say, the writing project was in shambles, as were communications with Robertson.

I got involved when the Mad Dog duo brought me press accounts that Robertson was producing a movie, *J.W. Coop*, and claiming full writing credits. From a review of the various drafts of the script, it was reasonably

clear that much of the movie was based on the script produced by Bud and Gary. They hated the movie and occasionally would announce they didn't want their names associated with it. In the next breath, they would denounce Robertson and demand that I put a stop to this outrage. At some point, we moved forward through the Screen Writer's Guild arbitration procedures and obtained a ruling that required Robertson to give joint writing credits to Bud and Gary.

Bud and Gary's contract with Robertson required that if any of their material was used in the screenplay, there would be a final payment. The sum was not forthcoming, and by now my clients had their litigation hats on. Our old buddy Warren Burnett, the premier trial lawyer and restless soul, had blown enough smoke up their ass that there was no turning back. Warren had assured them that he would come in for the trial and pound Robertson unmercifully around the courtroom. It was not a project that appealed to me, but I was too far into it. Suit was filed, depositions were taken, and all the grunt work was done. A settlement offer was made that seemed to satisfy the contract claim, but my guys were having none of it. The Mad Dog view was that Robertson would be too afraid to show his face in Austin again, and at the last minute a big settlement offer would appear. However, no additional settlement offer was made, nor was there any Warren Burnett. He got put to trial somewhere else on our trial date. I was fit to be tied. I had neither the skills nor the interest to try a jury case against a movie star.

My old classmate Malcolm McGregor from El Paso was dragooned into showing up for trial. Bless his heart, this was a thankless, no-win assignment. Malcolm came in over the weekend, and we tried to get our clients ready for trial. We should have allowed a month or two. On trial date, we drew the one district judge whom I considered to be a blood enemy, Charles Mathews. He had been the general counsel of Red Ball Motor Freight when I represented the Teamsters in years of conflict with the company. Our Teamster victory had probably cost him his job. It was not an auspicious beginning. Worse still, not only did Robertson show up, he did so in style. Dressed in a bush jacket, he looked every bit the movie idol. Our clients looked like street people, with coats and ties that didn't fit and a distinct aura of seediness. The jury panel embodied middle-class Austin—no freaks and no allies.

The first morning of trial was miserable. Malcolm called Robertson as the first witness, normally a sound tactic because it enables you to pin your opponent down to a story at the outset. Unfortunately, Robertson was simply too skillful, and his training as an actor turned out to be very useful as a witness. The judge and jury were fawning over Robertson. We were in a very tiny courtroom, and the visitors' gallery was immediately proximate to the jury box. Midway through the morning, I heard a stirring behind me and noticed the jurors looking with some fascination toward the gallery. Larry King had walked in with two or three young chicks in miniskirts and had plopped down in the first row. King, by now a well-known writer, had come to lend moral support to our duo; he was in a full beard and flamboyant costume. At the break, King and the dolls surrounded and hugged our clients as the jurors filed by open-mouthed. What little rapport we might have had with the jury dissolved at that moment. As the first day of trial came to a close, our clients were looking much the worse for wear; sweat was pouring over their shirt collars and their eyes had a certain glazed look. We explained that they needed to be back the next morning at eight o'clock. The look on their faces was utter

disbelief. It apparently had never occurred to them that they might have to sit there and behave for several days. As we left the courthouse, I told Malcolm, "Our clients are not going to make another day." Sure enough, that night our guys felt they'd had enough fun. We settled the next morning for their contract amount and a promise that Shrake wouldn't write anything nasty about Robertson. The Robertson litigation was a typical Mad Dog undertaking—a hodgepodge of absurdity and near disaster.

For a brief time it seemed that the Mad Dogs were in ascendancy. We even had the opportunity to expose the august *New York Times* to a Mad Dog moment. Molly Ivins had departed the *Texas Observer* and gone to work for the *Times*. She called to say that the managing editor, Abe Rosenthal, was making one of his periodic forays into the boondocks. Could Ann and I put together a dinner party for him and give him a glimpse of the scene? We decided that the principals of Mad Dog, Shrake and Cartwright, would provide a consummate exposure. We added Mike and Sue Sharlot to the mix. Mike, from the UT law faculty, and Sue, raised in Far Rockaway, N.Y., should, we felt, provide a little stability to the occasion. In truth, no one would have been adequate to the task. It was a hilarious event: the Dogs arrived a little bit trashed, and we all progressed from there. The culmination came when Shrake, a very sizable man, donned a large Afro wig and began a monologue as Dr. J., Julius Irving. Cartwright was quick to resume his early life as a sportswriter and began an interview with the basketball legend. At some point, Rosenthal's newsman training got the best of him, and he posed his own question: "How can I achieve the kind of stardom that has come to you?" Without a moment's hesitation, Shrake gave him his answer: "Learn to dribble, white boy." A breathtaking moment of repartee. Years later, a Rosenthal column described the evening as memorable and proof that imaginative people could provide their own entertainment. Of course, it took a little bit of fuel to get there.

I was the straight man through most of these years, the one who drove the car, sorted out the debris. The term I learned in later years, after Ann went into alcoholic treatment, was the "enabler." I probably filled that role. It was not unpleasant. It was, however, just a role. Somewhere there is a picture of the first and only Mad Dog Inc. board of directors meeting. The occasion was the appearance of an old acquaintance who had gone to work for *Playboy*. He came to town to do a piece on the organization and its players. The picture caption might have read: Here they are at their merriest, while here I am looking sober in a suit and tie. I had just flown in from Dallas from a court appearance in a serious matter. That's the way I remember much of the era—everyone around me winging off, including Ann, and me trying to steady the boat.

During this era Ann and her close friend Betty McKool did an annual Christmas card that was typically tongue in cheek. One holiday season Ann acquired a Santa Claus outfit for the photo shot, and with her dressed in the outfit, we went to a Christmas party at Gary Cartwright's. We went home at a respectable hour, and the next morning I was awakened at 6:00 A.M. by a great clatter on the wooden walkway that led to our house. I threw clothes on and ran upstairs to discover a visitation by the Flying Punzars and the Punzar groupies. The Punzars were dressed in their costumes: tights, capes, scarves, and trinkets. I only knew of the Punzars by reputation; rumor had it that they were in truth Bud Shrake, Gary Cartwright, and Jerry Jeff Walker, but sightings were rare, and reliable sources virtually nonexistent. The groupies appeared to be the

survivors of an all-night party. In this instance, it developed that the Punzars had come to seek the assistance of Santa Claus. As best Ann and I could determine, the Punzars had reasoned that no pharmacy would turn down a request from Santa Claus. They needed someone in a Santa Claus outfit to approach a drugstore and try to buy prescription drugs that would enable the Punzar party to continue for a few more hours, or perhaps days. The ruse didn't work, as pharmacists seemed to be a little leery of Jolly Saint Nick. Thus the party wound its way down, probably to everyone's best interest. But no one ever accused the Mad Dogs of chickening out on a party.

Nixon was gone, Carter was managing to bore everyone silly, and I got lured into letting my name go forward as a possible nominee to fill a Fifth Circuit vacancy. I knew in my soul it was a mistake, but I wasn't thinking very clearly. I guess the thought of going to New Orleans once a month to hear oral arguments from fatuous lawyers seemed a better deal than my current malaise. Carter named a commission to screen nominees, and I dutifully submitted a lengthy profile and went through the interviewing process. Ultimately, the commission recommended to the president fifteen names for five pending vacancies, including mine and Wayne Justice's, along with a set of fairly establishment types. I saw the judge sometime during this interminable process, and I opined that his only chance was if Senator Lloyd Bentsen felt it would earn him points in East Texas to elevate Justice out of their hair. Many would have thought that he could give less trouble sitting on an appellate court. Wayne took my remarks in good grace and explained that the first three vacancies would go to a woman, a Hispanic, and a Black. I remember being somewhat nonplused by my first real-world encounter with affirmative action. Wayne was exactly right, and soon there were two vacancies being contended for by a bunch of white guys. Wayne didn't make it, nor did I, thankfully. I did learn a couple of things from the miserable experience. First, the amount of misinformation that surrounds such a deal is astounding. Toward the end, I would hear almost daily rumors that my name was at the White House and other such foolishness. It drove me nuts. I also learned about stand-up friends. Jim Mattox, who was then in Congress, bombarded the White House regularly on my behalf. Closer to home, Wilhemina Delco gave me an absolute shot in the arm. John White, the state's former agriculture commissioner, was now national chairman of the Democratic Party. He was in town on behalf of the administration to meet with civil rights leaders to solicit their input. Wilhemina, to her undying credit in my book, told him bluntly that the civil rights movement wanted one thing and that was my appointment to the Fifth Circuit. White, nonplused by her vehemence, said he felt sure that something positive would be happening shortly on my appointment. Nice words, but by this time, I had become convinced that nothing was going to happen. There were just too many lurking problems out there, not the least of which was that I was a "union lawyer." The fact that I represented hippies and civil rights activists was not a worry to the establishment, as that crowd wasn't trying to reallocate wealth. Unions, however, were in the business of trying to get at the gold, and it's my guess my ties to the labor movement put me beyond the pale. Of course, in reality, I could never have passed any form of scrutiny regarding the Mad Dog behavior. At this juncture, I can only believe that letting my name go forward was about as Mad Dog as the plan to buy Sisterdale.

19
Of Time on the River

ANN AND I MADE our first river trip, a two-day run down Boquillas Canyon in Big Bend National Park in the late 1960s. The trip was put together by Bill Kugle of Athens and Don Kennard, a state senator from Fort Worth. For Ann and me it was notable in many respects. We had never been to Big Bend and we had never canoed. We promptly fell in love with both. I inexplicably crashed on a rock at the entrance of the canyon in the opening moments of the voyage. Ann and I salvaged what we could and left our mangled canoe affixed to the boulder. There were twenty or so boats in the flotilla, and we managed rides with other boaters for the next two days. My efforts to rescue the canoe and our gear taught me an indelible lesson about the force of moving water when I found myself pinned against the boat, a lesson I unfortunately had to relearn from time to time.

Quite apart from the adventure of the water and the majesty of the scenery, the most stimulating experience was provided by our fellow travelers. Somehow, these lawyers, politicos, and bons vivants became lifelong friends simply as a result of two days on the river together. I suppose adventures away from our daily routines short-circuit the usual time frame for forming friendships. It is remarkable how swiftly one can bond with strangers after a few days on the water. This group did include some most engaging types—my old union carpenter friend Henry Holman from early Austin days; the oft-mentioned legendary lawyer Warren Burnett; Willie Morris, by now a famous writer; and scads of others. From this point forward, I was determined to spend as much time as possible exploring the rivers of Texas, and even rashly announced a plan to run every river in the state. I have not yet reached that goal but over thirty years or so I've come fairly close and still may make it.

Upon our return to Dallas from this first river trip, I achieved one of the more signal victories of my legal career. I thought to examine my homeowner's insurance policy with some idea that a claim might be made for our lost gear. Sure enough, the policy covered losses occasioned by "vehicles." I duly submitted a claim and within short order received a call from the insurance adjuster. Understandably, he wished to know how the accident occurred. His laughter at my explanation got my dander up a bit as he patiently explained that vehicles were automobiles, certainly not canoes. Goaded by this flip response, I hied myself to the law books with a vengeance. As I had hoped, I found an early U.S. Supreme Court opinion that addressed the question of what constitutes a vehicle in the eyes of the law. The opinion, authored by Justice McReynolds, one of the most conservative of twentieth-century jurists, concluded that a vehicle was any form of conveyance including the "patient mule and the ocean liner." Confronted with this authority, the insurer capitulated and coughed up the seventy-five bucks I was claiming. My revenge did not end there. I copied the relevant language from the court opinion and shipped it to all the canoeists I knew in the state. Within a year or so, I noted that the standard Texas homeowner's policy had been altered. The language of the policy now limited claims to losses occasioned by motor vehicles. Thus,

like most legal victories, the fruits were short-lived.

Today if you go to Big Bend and want to run the canyons, there are river guides and outfitters who can put you in the river and take you out with first-class treatment from start to finish—most notably Far Flung Adventures, based in the ghost town of Terlingua. In the sixties and early seventies, no such luxuries existed. You hauled all of your crap—boats, gear, booze, and food—across West Texas. Then you had to figure out how to handle the vehicle shuttle, because you were coming out of the river one hundred road miles or more from where you put in. None of this was easy. The rigor of the preparations surely lent to the feeling of adventure.

Justice William O. Douglas was a fan of Texas and Texans. Knowing him somewhat, I think he was probably drawn to the free spirits that characterize the state. When I read Douglas's *Farewell to Texas*, I learned that he had made canoe trips in the Big Bend in the mid-1960s. The organizers of those trips hailed from the unlikely locale of Bell County, Texas, and were respectable lawyers. Somehow or other, Bob Burleson and Jim Bowmer of Temple and Davis Bragg of Killeen had the honor of introducing Justice Douglas to the joys of river running in the Big Bend world. In the process, they paved the way for adventuresome flatlanders from all over Texas to experience the wonders of the canyons of the Rio Grande. Douglas's chapter on the canyons of the Rio Grande makes a fine introduction to the attractions of this remote area.

Burleson always struck me as the most competent and adventuresome of all. He was the first, to my knowledge, to put together a river trip down the lower canyons, a trip that begins at the mouth of Boquillas Canyon and requires five days or more to reach an exit point on the river many dusty road miles from the little town of Dryden. This portion of the Rio Grande runs through the most uninhabited portions of the state. When Burleson put the trip together in the 1960s, there was scant information about the nature of the river they were going to face; his journal of the trip is fairly alarming, even in its spare language. Bill Kugle's oral version, as reported by Justice Douglas as one of the handful of adventurers, was positively hair-raising. Kugle came close to drowning when he lost his kayak in heavy rapids, losing portions of his gear and soaking the remainder. As the story goes, after recovering his kayak, Kugle finished the trip in the nude, which, according to Douglas, "caused the first human type he'd seen (other than his legal companions) in four days, a Mexican urchin near Langtry, to call his mamma: 'Mother, a naked gringo comes in a small boat.'" These stories always take on a little hyperbole, but Kugle insisted in later years that he had driven his pickup to Del Rio with nothing left to wear but his long Johns—always lots of fun on the river.

Burleson's notes for the Texas Explorer's Club describe the lower canyon trip succinctly: "This run is the toughest and best the Rio Grande has to offer. Allow from five days to a week to make the entire run, and remember that you will not be near any habitations or access roads during almost all of that run. This is true wilderness, and you will probably not see a single human being during the entire run. Many tough rapids . . . and almost a continuous canyon for three-fourths of the trip. This trip is for properly prepared and experienced river runners, and could be a very arduous and miserable trip for the careless or ignorant adventurer." Ann and I made the lower canyon trip a couple of times in later years, and even with Burleson's journal as a guide to freshwater springs and river hazards, it was a challenge to body and soul.

Not long after our initial Big Bend outing, Bill Kugle called to invite us on a run down the Buffalo River in northern Arkansas. The trip was scheduled for Easter, and that was typically a family time. By now I was fully captivated by notions of the river, and I got Ann to agree to handle Easter and let me take off. My canoe companion, Wayne Oakes from Austin, I barely knew, although he was to become a lifelong traveling buddy. Ann announced that she would be happy to pack our river meals for us. It was to be a relatively short river run; we would be camped only one night.

The drive proved to be more than we bargained for, and we finally pulled off and slept beside the road a few miles from some place called Dogpatch, Arkansas. The next morning was slightly overcast, and the river did not look particularly inviting. We scrounged some food from a nearby bait stand and hit the river, literally, dumping in the first twenty minutes. We lost most of our beer—a huge calamity—but managed to salvage Ann's carefully packed meals and Wayne's guitar. Lunch that day gave us our first sense of foreboding. "Lunch—Day One" contained a can of Tillie Lewis beets, underarm deodorant, and a nail file. Wayne looked a bit panicky and wondered, "You don't suppose that Ann packed all of our meals this way." "No," I assured him. I explained that Ann had seemed perfectly content for me to make this trip, and surely she would not have chosen such a means of expressing any unhappiness. Fortunately, our companions had ample provisions, so lunch was no problem.

Afternoon on the river was pleasant, but toward evening storm clouds began to gather. We stopped at a Boy Scout camp, empty that time of year, for the night. Wayne and I had made a strategic error when we had loaded our canoe that morning. The weather had not seemed threatening, so we jettisoned our tent in favor of hauling more beer, all of which was lost in our early mishap. As the clouds boiled, Wayne and I turned to "Dinner—Day One." It was worse than the lunch package: Massengill's douche powder, a turnip, a packet of dried split pea soup, and shoe polish. Wayne went bonkers and threw the balance of the meal packages into the Buffalo. It dawned on me then that perhaps Ann was *not* that happy about me taking off to run the river. Again, friends took pity and gave us food just before the deluge hit. We ended up sleeping on the concrete floor of the boys' outdoor crapper, as the only shelter available. They say "any port in a storm," but the adage makers certainly didn't take into consideration the stench of our surroundings.

Wayne and I managed to complete the trip with our friendship intact. When we got home from this tortured outing, Ann explained that she and Phyllis Kultgen had taken on a few drinks before they went shopping for our provisions. Somewhere in that process it had become too funny to resist the temptation of loading us up with inedibles. No other explanation was necessary in those years. Wayne and I became the closest of comrades until his untimely death. He was for a time the director of the Texas Civil Liberties Union and an original tenant, along with the *Texas Observer*, when Sam Houston and I bought the old Seventh Street office.

Even the members of the legislature began to get into the notion of river running. Jumbo Atwell from Dallas was the dean of the dominating conservative bloc of the Texas house and was much revered by the editorial writers of the *Dallas Morning News*. Jumbo had once practiced law with my old radical partner Otto Mullinax. He made his first legislative race from Dallas as a CIO-endorsed candidate and was soundly trounced. Jumbo got the message in jig time and promptly changed his stripes and was elected the next

time around carrying the conservative banner. He had been an Austin political figure for twenty years or so. Once he got beyond the watchful eyes of Dallas piety, Jumbo reverted to being one of the great hell-raisers of all time. In the late sixties, he authored the Texas Water Safety Act, undoubtedly at the behest of some lobby group, and decided to dramatize the event with a canoe trip down the Colorado River below Austin.

It was an ideal arrangement, since the proximity to Austin made it easy to have senate pages and house staffers at beck and call to haul canoes and all manner of crap. The liquor lobby was delighted to furnish booze for an entire flotilla, and that's exactly what we had. Ron Clower and I made the trip. Ron had shown up in our lives in the era of precinct politics in Dallas when he was still a law student at SMU. He later went on to the Texas senate, but at this time he was working for Ralph Yarborough in Washington. Ron was an ideal companion for this and many other madcap excursions over the years.

We put in just below Longhorn Dam; our plan was to camp on an island some miles downstream. Dozens of boats sallied forth, filled principally with Austin ne'er-do-wells, a term that embraces members of the Texas legislature. The Colorado was on something of a rise. Jumbo had eschewed a canoe, opting instead for a small outboard motorboat. He roared up and down the river swigging vodka and having a very merry time. Ron and I were in one of the last of the canoes as we drifted along in the current in the totally unchallenging river. Late in the afternoon we heard muffled cries for help that seemed to come from the riverbank. Investigating under the overhanging trees, we located our host, Jumbo. It was an event right out of the early western movies: the horseman rides under an overhanging branch and is swept out of the saddle. In a rash moment, Jumbo had run too close to the bank and been caught by a branch and hung out to dry, so to speak. The boat had gone downstream at full tilt and eventually overturned, dumping Jumbo's case of vodka into the murky Colorado. We, along with Senator Kennard, rescued the adventurer and ultimately deposited a somewhat subdued state representative on our island campsite. "Weathervane," the political intelligence column of the *Dallas Morning News*, dutifully reported that Representative Atwell, father of water safety, had suffered a canoeing accident on the Colorado and lost all of his camping equipment, but there was no mention that his only equipment had been vodka. The Dallas establishment surely knew how to protect its own.

Our favorite river in those years was the Guadalupe, above and below Canyon Dam. Ann and I canoed and camped up and down that stream, and our children have covered almost every portion of the river. It was a grand spot for family outings. This was long before outfitters and tubers had turned the river into a weekend brawl. Indeed, the landowners, especially those along the upper stretches, were hostile in the extreme, as were many members of local law enforcement. The recurring issue of public access turned on the question of navigability. If the upper Guadalupe was navigable, then we had a right to canoe it and to enter and leave it on public rights of way. This is how we saw the law, a view not widely shared in the Hill Country. On one stretch in particular, local law enforcement was threatening to arrest canoeists who attempted to leave the river at the most convenient low-water crossing.

It was decided to confront authority with authority. Two of the regular river runners were Land Commissioner Bob Armstrong and Ned Granger, county attorney of Travis County. Ned had graduated from Waco High with Ann and me and was a frequent boater. The two of them agreed to canoe to the disputed

crossing and confront local constabulary with badges of their own. When the showdown occurred, our heroes explained just who they were and how the public had a right to enter and leave this navigable stream. The local law officers were underwhelmed to say the least: “We don’t give a good goddamn who you are. Step out of your canoe at this crossing and you’re going to the Kendall County jail.”

Thereafter this portion of the Guadalupe was avoided for a spell. Then market forces began to take over. As locals learned they could make money selling beer and supplies to canoeists, peace came to the upper Guadalupe.

In arid country such as Texas, you have to pick your times to go river running. Rainfall determines when and where you can go. Rivers can be navigable one week and only draggable the next, safe one day and a hazard the next. Upper Barton Creek in Austin is a good example. When the creek is on a rise, you can still canoe through fairly pristine environs. To demonstrate this point, Molly Ivins, several others, and I took then Austin Mayor Frank Cooksey on the upper creek. Our purpose was to persuade him of the importance of protecting the area. Frank was such an environmentalist that he probably didn’t need our efforts, but it was a good excuse for an outing. The stream was fast and narrow, with the result that we dumped the mayor a lot of times, but he took it in good stride, and we perhaps advanced the cause of preservation.

It was on Barton on another occasion that I came to the end of my reckless inclinations. I had taken an inexperienced canoeist out on the creek during a rise—a very foolish move. This was after my new son, Sam, was born, and I was just learning to be a father once again. As we approached a low-water bridge that was under water, I warned my passenger not to try to step out of the boat. He ignored my warning, and the inevitable happened. He turned the canoe over and I felt myself being sucked under by an overwhelming force. I realized I was going to be pulled under the bridge and through the culvert and would survive only if there were no obstructions. My only thought was “I have not had enough time with Sam.” I popped out about thirty yards downstream, only slightly the worse for wear. Since then, I take the time with Sam and his sister, Hallie, and I approach rivers with much more caution.

Running rivers is a most satisfying outdoor venture. Moving water is a beautiful sight, and nothing rivals a sun-dappled Hill Country stream running across a limestone bed. For me, it is one place you can feel tied to the past. Undammed streams, because of periodic floods, remain much as they were historically. With a little luck on a good run, you can feel at one with history and the explorers, trappers, and settlers who came up and down the rivers of the land. Rivers are not created by Disney and don’t require the internal combustion engine to navigate. They are there for the taking if you are willing and respectful.

20
A Decade or So of Voting Rights Wars in Texas

IN 1971, GEORGE KORBEL—all three hundred pounds of him—arrived from Minnesota as a VISTA volunteer with the Mexican American Legal Defense Fund (MALDEF). This massive man was still playing semi-pro football well into his fifties. Of more importance, he remained in Texas to forever change how Texans elected their government officials. We were first associated in the initial *Regester* case, in which George amassed mountains of voting and census data to sustain the claim that San Antonio should be carved into individual legislative districts. For thirty years or so, we have been colleagues in a myriad of voting rights matters. Never was there a more supportive ally nor a more intractable opponent.

After the victories in the *Regester* cases, we turned to rearranging city councils, school boards, and county governments across Texas. Sometimes we worked jointly, but mostly we operated in separate litigation. I began to roam into other matters and came to depend on George to keep me involved in voting rights issues. He never failed to come up with new challenges.

The federal Voting Rights Act was originally passed in 1965. At that time, the key provision of the act was the Section 5 requirement that voting changes in covered states must be approved by the U.S. Justice Department. This simple-sounding provision has enormous potential. It literally means, as now construed, that no covered state, nor any of its cities, counties, school boards, or other political subdivisions, could make any change affecting voting without preapproval by the U.S. Justice Department. Not only does this affect redistricting every ten years, following the census, but also such matters as city annexation, locations of polling places, and methods of voting and registering to vote. Initially, coverage was determined state by state, depending on factors such as use of literacy tests to determine the right to vote. Literacy tests were some of the cruder devices used in the South to frustrate Black voter registration. Local county officials were empowered to require potential voters to interpret obscure provisions of the state constitution, or some other impossibility, and failure to satisfy resulted in denial of registration. It was a system widely abused and resulted in many places in an absolute absence of Black voters. The effect of this trigger was to initially limit Section 5 coverage to only six southern states, excluding Texas. Texas had a perfectly abysmal history as regards minority voting rights, and there was no legitimate reason to exempt Texas. The exclusion of the state has been laid at LBJ's doorstep, rightly or wrongly.

When the Voting Rights Act was amended in 1975, a new Section 5 trigger was added that focused on Mexican American voting rights; this new formula placed Texas under Section 5 of the law. It meant that thereafter any changes in Texas election laws had to be submitted to the Justice Department for approval. George Korbel, among others, played a critical role in the lobbying efforts to include Texas. We had the honor of putting together the first case involving

Texas and the expanded act. In 1975 Dolph Briscoe was governor, and Mark White was his secretary of state. White had devised and, with Briscoe's help, lobbied through the legislature a new voter registration law. The law seemed innocent on the surface, but in truth it represented a nightmare for minority voters. Minority groups and political organizations had spent untold hours and funds trying to expand the number of registered voters within the state, concentrating largely on the vastly underrepresented Black and Mexican American communities. The new act contemplated a five-million-piece mailing to the state's registered voters; failure of the voter to return a new form would result in that voter being purged from the registration records. We envisioned the loss of hundreds of thousands of minority voters from the rolls because, for better or worse, lower-income families are notoriously loathe to mail back government forms—a fact that is amply demonstrated by the Census Bureau's constant undercount of minority residents. George called and said he would draft the pleadings if I would find the plaintiffs and be the lead lawyer.

Even before George called, John Duncan, of the Texas Civil Liberties Union, and I had been bitching about the statute and its adverse impact on minority voters. It was apparent that this was the type of legislation that had to be submitted to the Justice Department under the recently expanded Voting Rights Act. State officials, Governor Briscoe, Attorney General John Hill, and Mark White were still vigorously contesting application of the Voting Rights Act to Texas. They seemed hell-bent on proceeding with the voter purge without Justice Department clearance. Indeed, they apparently had no plans to even submit the statute for Justice Department review. Time was short; the mailing was slated to begin on November 5, 1975. We wanted to file the case before Judge Justice, but by now he was sharing the Tyler docket; only the Sherman docket was exclusively his. I went upstairs to see John Duncan for aid in securing plaintiffs. He had a TCLU member in Grayson County, within the Sherman Division. Thus it was that Gloria Weisberg and her Black maid, Ruby Flowers, and Black handyman, W. H. Baker, became the plaintiffs in this landmark voting rights action. Before we were through, the case became as acrimonious as any I ever litigated, for we found ourselves dealing with some very sore losers.

The suit named Mark White and the tax assessor of Grayson County as defendants, and hearing was held before Judge Justice on November 3, two days before the scheduled mailout. Judge Justice found "the proposed mailout . . . will cause substantial confusion among the state's voters, particularly among minority voters, which will result in the latter's disenfranchisement." He issued an injunction prohibiting the mailout until such time as the new act had been precleared by the Justice Department. This order left an angry secretary of state with 5,000,000 letters he could not mail. The court's order was entered at 7:30 P.M. I still had to get back to Austin that night. As we left the courtroom, I secured, I thought, an agreement from the attorney general's lawyers that they would notify me if they went to the appeals court to seek an emergency stay of Judge Justice's order. The judge had the same recollection of the agreement.

I was sitting in my Seventh Street office the next day around noon when a young man from the AG's office arrived and handed me a big packet of papers. Among them was a stay order by Judge Gee of the Fifth Circuit, signed about thirty minutes earlier. I was livid. The presentation of a stay application to an appellate judge without notice to me was a flagrant violation of our agreement

of the previous evening. Lawyers aren't supposed to do those things. My friend Frank Ivy was in the office at the time, as he had come by to pick me up to play racquetball. Frank has a precise recollection of what happened next. As the young man started to leave, I stopped him and told him I wanted him to take a message back to Attorney General John Hill: "You tell General Hill that he is a no good chicken shit." According to Frank, the young lawyer looked somewhat nonplused, and then I repeated myself. Sadly, I have no recollection of making the statement, but I take Frank's word and I now consider it to be one of my finer moments. I doubt the message was ever delivered, but I can only hope that it was.

My anger was such that I promptly called Tom Gee and requested an immediate hearing on the stay. I do remember telling Judge Gee that I was apoplectic about the AG's behind-the-back maneuver. I suspect if I hadn't been so angry I would not have had the temerity to go directly to Judge Gee. To his everlasting credit, Judge Gee heard me out and then told me to call the attorney general's office and that he would hear my side immediately. Judge Gee's office was only a few blocks away, and in short order we were in his chambers. After hearing my complaints and listening to the posturing of the attorney general's office, Judge Gee modified the stay and forbade the mailout—and Mark White had to eat his 5,000,000 pieces of mail. Tom Gee was an iron-ass ex-Marine and a lifelong Republican. His immediate response to my plea was an enormous credit to his honorable soul.

Ultimately, the Justice Department objected to the new law, and the state was permanently prevented from proceeding with the proposed voter purge. When we went to collect our attorneys' fees, the AG sought his revenge. The Voting Rights Act afforded fees to prevailing parties, and recovery should have been a matter of course. The state's attorneys decided, however, to use an attorneys' fees hearing to vent their anger.

I had to get on the stand to prove up my fees, although normally such matters are handled by affidavit. In this instance, the AG insisted upon live testimony, and Judge Justice bent over backward to accommodate the state. I had to acknowledge that I had never seen any of the plaintiffs before suit was filed, indeed, had never spoken to them until the day of the fee hearing. I had relied solely upon a written authorization obtained by the Texas Civil Liberties Union, for whom I was a cooperating attorney. Here is a taste of the day's hearing before Judge Justice, with my old friend Lonnie Zwiener appearing for the attorney general's office:

Q: Well, how did you find the plaintiffs in this lawsuit? How did you happen to find three people from Sherman, Texas, to be plaintiffs who gave you authorization in writing to file this lawsuit?

A: I don't see how that is material. They did.

MR ZWIENER: Your Honor, I submit that it is. Without attorney-client situation, there will be no basis to award attorneys' fees in this case.

THE COURT: What is the materiality?

MR ZWIENER: If there is not an attorney-client relationship, it would be improper to award attorneys' fees. My question is how did he find these plaintiffs? He has testified previously that he didn't talk to any of them about the lawsuit before it was filed. As a matter of fact, the first time he talked to the three first original plaintiffs was this morning.

THE COURT: Well, as I understand it, he had the written authorization from the plaintiffs to proceed.

MR ZWIENER: Suppose, Your Honor, that he sought these plaintiffs out and asked them to give him written authorization. I would say there's no attorney-client.

THE COURT: Are you seeking to insinuate that this attorney here is guilty of barratry?

MR ZWIENER: I'm not insinuating it, Your Honor, but I think I am entitled to find out whether he is.

THE COURT: Well, if so, I would think that would be a matter to be brought before the State Bar of Texas for solicitation of a client, and I doubt the propriety of this court entertaining this matter.

MR ZWIENER: Your Honor, of course, my contention is, if there was not a genuine attorney-client relationship in this case, it would be improper to award attorneys' fees whether the statute authorizing them is constitutional or not, and that's the reason that I am trying to find out how these plaintiffs were located.

[*Pause*]

THE COURT: I find this very distasteful.

It may have been "distasteful" to the court, but it was unshirted hell for me. None of the plaintiffs had ever seen me before, and my two Black plaintiffs, both of whom had been subpoenaed for the hearing, did not have the foggiest idea about the nature of the case. Before the day was over, the AG attacked George Korbel's qualifications and even argued that the Mexican American Legal Defense Fund could not represent Black plaintiffs. All in all, not an edifying day in the legal trenches.

The state's appeal from Judge Justice's award of attorneys' fees was only slightly more restrained. The defendants' appeal brief argued:

> The record is clear that MALDEF and TCLU decided to file this case, and the named plaintiffs were then secured . . . Plaintiffs obviously forum shopped to bring this action in Judge Justice's court. That this decision was economically sound is apparent from the order being appealed from.

Six years later, in 1982, the Fifth Circuit affirmed my attorneys' fees award, calling me an "acknowledged expert in the field of voting rights." This helped assuage my injured feelings, although by that time I was on the verge of taking charge of litigation for the new state attorney general, Jim Mattox. The assistant AGs who had given me such grief in the fee battle did not seem much in evidence.

As suggested elsewhere, Republicans in Texas have always dwelt on the notion that there is widespread illegal voting in the state's minority populace, an idea that has never found any evidentiary support. This idée fixe got them in a peck of trouble during the first term of Governor Bill Clements. Clements was the first Republican elected governor of Texas since Reconstruction. He had appointed a political ally, David Dean of Dallas, as secretary of state. In preparation for the 1982 general election, Dean decided to pursue this fantasy. By this time, the state was somewhat into the computer age. It seemed to Dean possible to run a computer comparison between the state's list of registered voters and the Department of Public Safety's records of the state's convicted felons. It is unlawful in Texas for convicted felons to vote. Dean, in an effort to ferret out unlawful voters, undertook to run a program that sought matches between felons and registered voters. The program produced thousands of names of supposed felons. Dean's press release gleefully announced that "a master list of convicted Texas felons by name, sex and date of birth were matched against the Secretary of State's master voter registration files to arrive at the number of convicted felons" and that the list was going to be mailed to each voting registrar in Texas. The shit hit the fan. The list seemed to have

everyone in the world on it but convicted felons—lawyers, businessmen, and a host of other innocents. George found a perfect plaintiff. He was a Hispanic man in his medical internship who happened to be the godson of the presiding federal judge in the Brownsville Division of the Southern District of Texas. He had never been convicted of anything. His only brush with the law had been a dismissed charge of minor in possession of alcohol. This was fairly typical of the screwups that occurred statewide.

George and I filed suit in Brownsville against the secretary of state under a variety of theories of interference with the right to vote. By the time we got the suit on file, most of officialdom was running for cover. The Department of Public Safety was quoted in the *Dallas Morning News:* "We explained to them at that time we were not able to electronically separate persons convicted of felonies from persons convicted of misdemeanors." Not only were the DPS records in abysmal shape, but the likelihood of reliable matches was uncertain. An internal memo from the head of Crime Records for the DPS described the screwup:

> Several mornings later . . . I heard a radio broadcast which stated that the Secretary of State had forwarded a list of "convicted felons" to each county tax assessor. The total list was alleged to contain 28,000 names. I suspected something was wrong . . . It was determined that of the four-step [safeguard] procedure that Data Processing personnel had drawn up the Secretary of State had stopped the procedure during step two.

The overeager Dean had stepped in it.

In Travis County, the situation became particularly amusing when a Democratic candidate for the legislature learned his name was on the list. Jerry Angerman, a successful businessman, called a press conference and denied ever being convicted of a felony—his only charges ever had been speeding and abusive language, both inconsequential misdemeanors. Angerman threatened a libel action, as did others who were improperly named. George and I had a high old time running the secretary of state and the Department of Public Safety through the wringer. The upshot was that in lieu of going to trial, the defendants agreed to a federal injunction requiring Dean to withdraw his "felons list" and prohibiting the secretary of state from engaging in any other frolics that might interfere with voters in the upcoming November general election.

All of this foolishness was part of the Clements reelection effort in 1982. In Dallas, the Republicans were up to their same old tactics of trying to flatten Black voter turnout. On election day, large multicolored signs were placed at polling places. In bold letters, the signs warned in part:

> DO NOT REMOVE THIS SIGN—
>
> BY ORDER OF THE SHERIFF OF DALLAS COUNTY
>
> You Can Be Imprisoned: . . .
>
> 3. If you vote without being Registered . . .
>
> 6. Violate the Texas Election Code

Although this warning presumably applied to all voters equally, the Republican ballot security operation placed them essentially only in the minority precincts. This chicken-shit nonsense has characterized the behavior of Dallas Republicans during my entire political life in Texas. We assumed Secretary of State Dean was behind this game, but under oath he stoutly denied any part in it, insisting that he had warned against the project. The perpetrators were a group of Republican judges in Dallas, some of whom were at least

shamefaced about it after suit was filed against them by my old buddy Ed Cloutman. When the dust settled, it turned out that the sign idea came from Governor Clements's reelection office.

The 1980 census and the resulting redistricting kept George and me busy for years. The first crack was at the Texas house reapportionment. House Speaker Billy Clayton had expended a yeoman's effort in helping friends and punishing enemies. George had monitored the process closely and was convinced that the resulting redrawing of house seats violated the Texas Constitution. In house redistricting, Texas counties are significant building blocks. County lines may be cut only if necessary to assure one-person, one-vote compliance. In George's view, the Clayton plan had violated this principle in many instances, but most glaringly in El Paso County. Our lead plaintiff was Robert Valles, an El Paso legislator. We tried the case in Travis County before Harley Clark. Judge Clark was one of that relatively rare breed of state judges who was perfectly willing to hammer the establishment when required. Somewhat ironically, the case was defended for the state by Rick Gray, head of litigation in Mark White's AG office. Rick and I later became not only good friends but law partners. George Korbel was my only witness. He convincingly demonstrated through maps and charts that there was excessive and unnecessary cutting of county lines. Although his testimony was delivered firmly and to the point, his demeanor on the stand was strange to me. He seemed terribly uncomfortable and ill at ease. This was surprising for someone who had testified so frequently. At the lunch break, I finally learned the source of his discomfort. When he got to the witness chair, George realized that the zipper of his fly had broken, so he had spent the entire morning squirming in the witness chair as he tried to hold up his maps for the court to see without revealing his clothing predicament. Repairs were made over lunch, and George sailed through the balance of his testimony. Judge Clark, on the basis of George's maps, concluded that the plan was unconstitutional because of unjustified cuts in county lines. In my argument to the Texas Supreme Court, I simply displayed giant reproductions of George's maps, and their effect was dramatic. There was no way to rationally explain the legislative line drawing, and in *Valles v. Clements* a unanimous court affirmed, holding the redistricting plan unconstitutional. George and I had our first of several successful attacks on the 1980 redistricting process.

Jim Mattox had shown up in my office about this time wishing to challenge the redistricting of the Texas congressional seats. This issue had been the bruising battle of the regular legislative session and later special session. Mattox was in Congress from Dallas County. In Republican circles, there was no more reviled officeholder in the state. They hated Jim. He was bellicose and neither asked nor gave any quarter in his attacks on Republican officeholders. Jim had won two congressional races in Dallas that made mud wrestling look like a ladies' tea party. With Clements in the governor's mansion, redistricting was the Republicans' chance for revenge. Black voters in south Dallas and Oak Cliff were an integral part of two Democratic seats from Dallas, one held by Mattox and the other held by Martin Frost. Martin had begun his Dallas career as a television newsman, and I had first gotten to know him when he had been the law clerk for Judge Sarah T. Hughes. Nothing would have made Dallas Republicans happier than to rid themselves of both of these Democrats, but Mattox was their principal target.

At the opening of the 1981 legislative session, Governor Clements announced his priority to be the creation of a "Black" congressional seat in Dallas County. To the best of anyone's memory, this was the governor's first, and only, expression of solicitude for the plight of Black Americans. There were those cynical types who thought this to be a ploy to eliminate the Mattox congressional seat, and perhaps get Frost at the same time. Indeed, almost every Black member of the legislature saw it exactly that way and opposed the governor's congressional plan for Dallas County. The Texas legislature adopted instead a congressional redistricting plan that would have preserved both the Mattox and Frost seats. The governor vetoed the legislative plan, proclaiming once again his insistence on his so-called Black congressional district in Dallas. Finally, after a rancorous special session, Clements managed to force through his congressional proposal.

Mattox wanted to sue to challenge the new plan, for it indeed eliminated any chance of his reelection. The so-called Black seat in the governor's bill was fairly suspect. Although it did corral all of the available Blacks in south Dallas and Oak Cliff, it was not a majority Black district. There were serious doubts that it could produce a Black electoral win. For me, this was an extremely hard call for a variety of reasons. To attack the district was antithetical to what I had been doing for years. I had been in the forefront of creation of minority election districts all over the state. Also, to challenge the district would not necessarily be popular in the civil rights world. Although a large majority of Black political leaders opposed the governor's plan and supported the retention of the Mattox seat, there were others who were genuinely tired of white liberals riding into office on the strength of Black voters. Finally, it was an extremely hard case on the law. Although it was patently a racial gerrymander, albeit arguably benign, no federal decisions had ever voided a plan on that basis.

Jim's persistence, and my antipathy toward Clements and the Republicans, finally won out. I figured you had to play the hand you were dealt, and I wanted to be a player. I was by no means sure whether such an attack would fly in front of Wayne Justice. After a fair amount of soul searching, I concluded that his court would be the right starting point. By now, there were so many new judges in the Eastern District that only the Paris, Texas, division was wholly Judge Justice's. Leighton Cornett, an old lawyer friend and a yellow-dog Democrat, practiced in Paris. He located a plaintiff—Reverend Seamon, a Black preacher—and we were off and running. George Korbel was unhappy with a new South Texas congressional seat, and he joined in the attack. A three-judge federal court was convened that included Judge Justice and two recent Carter appointees, District Judge Robert Parker of the Eastern District and Sam Johnson of the Fifth Circuit. Judge Johnson's seat was probably the one I had been in contention for, assuming I ever was a contender for a Fifth Circuit appointment.

I secured additional Black plaintiffs in Dallas to join in the challenge, primarily Juanita Craft, the longtime head of the Dallas NAACP and a widely respected advocate of Black interests. Juanita was a known activist, so with her on my side, it was difficult for our opponents to characterize the suit as just a bunch of whiteys trying to pull Mattox's chestnuts out of the fire. We were further benefited by testimonial support from State Representatives Craig Washington and Paul Ragsdale, prominent players in the Black legislative caucus. In truth, although the suit was brought at Mattox's behest, our goal was widely supported by Black political leaders. They saw the congressional plan

for what it was: a Republican effort to gut Democratic congressional seats in Dallas County.

The principal pretrial fireworks revolved around my efforts to take Governor Clements's deposition. He confidently announced to the press that he wasn't going to "have any two-bit lawyers" asking him questions. I argued to the court that we were entitled to the governor's deposition because we were attacking the governor's own plan, and his intent was relevant. The court saw it that way and ordered him to appear. Appeals to the Fifth Circuit were unavailing. On the appointed day, George and I arrived at the governor's office to take the big man's deposition. I had the pleasure of telling the governor that I wanted to introduce the two-bit lawyers who were going to depose him, and then I introduced my mammoth companion, Mr. Korbel. After all of his protestations, Clements proved to be all sweetness and light. When I asked him about his newfound concern for Black voters, his motives were somewhat revealed. He testified that although the district he had forced through the legislature might not be a majority Black district, "it was acceptable to me as a minority district which would give the Blacks the representation that I felt like they deserved." The use of the "I" was somewhat telltale. When I pushed him to explain the evils of the current Mattox district, he explained: "I think the minorities in this district as it is now constituted have been used by the liberal Democratic Party of Texas for their own purposes." You have got to ask questions to get answers, and the governor confirmed what everyone sort of knew. His motive in insisting upon a minority congressional seat was nothing more than an attempt to rid himself of Mattox. There was nothing wrong with this goal; this is, after all, politics, not some high-minded debate. Devious political motives were not going to be sufficient to legally undermine the plan.

We went to trial in November. My trial theory was a bit of a pig-in-a-poke argument. Under current redistricting, and under the original plan vetoed by the governor, Black voters were significant players in two congressional districts—Frost's Twenty-fourth and Mattox's Fifth. Under the new plan, minority voters had surrendered all influence in the Fifth District in exchange for what was at best a marginal chance to dominate the Twenty-fourth. This factual theory was supported by the testimony of Representatives Ragsdale of Dallas, Washington of Houston, and Matt García of San Antonio. As usual, I used Oscar Mauzy as a Dallas expert witness to confirm both the history of the plan in the legislature and its real-world political effect. I lay behind the log on a somewhat distinct legal theory, notably, that any race-based government action is constitutionally suspect. As a result, I was able to get the governor's legislative leader and plan author to testify that he had packed every Black he could get his hands on in Dallas in the minority district. The result was a classic race-based gerrymander, although arguably for friendly purposes.

Trial of the case was completed well in advance of the deadline for filing for office. No ruling came, as the court seemed to be waiting to see what the Justice Department was going to do with its review of the plan under the Voting Rights Act. By early January, Mattox was going crazy and driving me likewise. He wanted to know whether I was going to win the challenge to the Dallas districts. He knew he could not be reelected under the governor's plan and said he planned to file for Texas attorney general if I didn't win the lawsuit. I kept explaining that the outcome was very much in doubt, particularly if the Justice Department raised no objection to the Dallas districts. The filing deadline was February 1, 1982. On January 25, our three-judge court

extended the filing deadlines for the congressional seats, but not for any other offices. This pushed Mattox over the edge; he could not wait any longer. Mattox filed for attorney general because if he waited to learn the outcome of the congressional lawsuit, and I lost, it would be too late to file for any other office. Governor Clements had gotten his wish, and Jim was no longer going to be in Congress from Dallas. I don't know whether the governor had considered the possibility that Mattox might show up as the state's attorney general. John Bryant, an old ally, filed for the Mattox seat, gambling that I might win the lawsuit. John had been a longtime progressive legislator from Dallas and was one of the few voices of reason in the Texas house. Finally on January 29, the Justice Department acted. The department bought George's complaint about the South Texas seats but made no comment on the Dallas configuration. This was a body blow to my case but not necessarily fatal.

The legal effect of the Justice Department action was to nullify the entire congressional reapportionment plan. There was no time for the legislature to enact a replacement, for the primaries were only three months away. As a result, it became the court's responsibility to adopt a temporary plan under which to conduct the 1982 elections. The law was somewhat murky at the time as to the court's appropriate role. Essentially, the court was to track the legislative enactment so long as it satisfied the Constitution and principles of racial fairness. I did not know what to expect from the court, for no clues had emerged during the trial. Judges often telegraph how one's evidence or arguments are being received, but not so in this case. Lo and behold, in late February, the court issued a two-hundred-page opinion in which a majority bought my arguments about the race-based gerrymander in Dallas. The court adopted for the upcoming elections a Dallas County plan that Oscar Mauzy had proposed in the special session of the Texas legislature. The political effect of the court plan was to save the old Mattox seat as Democratic. Judge Justice's concurrence made interesting reading. On the factual side, he found:

> The impact of SB 1 on minority representation in Dallas County may be succinctly expressed: determinative swing-vote influence in two congressional districts was reduced to heavily determinative in one district. The remaining district is so dominantly white, and so heavily conservative, as to obliterate . . . any hope on the part of the minorities remaining in that district that they might influence the outcome of the congressional election.

On the legal-analysis side, Judge Justice's opinion anticipated U.S. Supreme Court action that came a decade or more later, reasoning that "race-conscious action, even if generated by an avowedly 'benign' purpose, will receive the most exacting perusal."

I was ecstatic. I had pulled in this long shot against great odds and in the process screwed over the Republicans big time. Such are the pleasures. George brought home his victory, and a court-ordered plan for South Texas closely tracked his wishes. With the election only a couple of months away, the court order sent local election officials scurrying to redraw voting precincts to conform to the new lines and to reassign, where necessary, voters to the new precincts. Johnny Bryant was exultant, and I was basking in praise. Unfortunately, litigation of this nature is a damn roller-coaster ride. The state's lawyers filed an expedited appeal to the U.S. Supreme Court. Given the shortness of time, I assumed it didn't have a chance in hell. About two weeks before the primary, the Supreme Court reversed and instructed the lower court to reinstitute the governor's plan for Dallas, if it could still be accomplished in

time for the primary election to be held without undue confusion. Desolation prevailed around my digs.

It has never been my proclivity to get depression paralysis; usually my anger is such that I can keep plugging away. This time was different. I could not seem to get it together to do anything to respond to the Supreme Court order. George encouraged me to seek affidavits from local election officials detailing the difficulties in trying to rearrange election lines at this late date. I knew Dallas County officials would be hopelessly against me, given the heavily Republican structure of the county. I roused myself and turned to Don Gladden in Fort Worth, because the changes would affect both Tarrant and Denton Counties as well. Don was, and is, irrepressible. A former legislator and longtime civil rights lawyer, he was quick to step up to my aid. He assured me that there were still some Democrats among Tarrant election officials and that he would come up with some "impossibility" affidavits. He did so and put me in touch with a friendly official in Denton County. With their great help, I managed to put together a presentable showing of the extreme confusion that would attend any redrawing of the districts at this late date. It was perfectly obvious that huge problems would emerge because any such changes would result in redrawing voter precinct lines and reassigning voters. Nonetheless, the Dallas officials swore by affidavit that they could accomplish the changes with the greatest of ease. There we had it—my affidavits against theirs, but all the momentum was in their favor as a result of the Supreme Court ruling.

The three-judge court set an immediate hearing in Austin to hear argument on the proper response to the Supreme Court order. By this stage of the lawsuit, I was the only surviving plaintiff lawyer. All the others had either won or given up. I faced the forlorn prospect of being in court with no allies and a gaggle of lawyers at the defense table. The clients, I think, had lost all hope and assumed I was going to court to have my ass handed to me in my hat. I was no longer living with Ann and had a small apartment near my office. The hearing had been set for 1:00 P.M. I recalled the Jackie Gleason scene in *The Hustler*. Just before the last round it seemed certain that Paul Newman was going to take Fats to the cleaners. Gleason goes through a sort of ritual purification. He carefully washes up, freshens his appearance, and wins the match. I went back to my apartment and did the same, donning my best getup. I then played the score of *Chariots of Fire* on the tape player and listened to it all the way through. That did it; I suddenly felt all was possible as I strode to the federal court.

The scene at the federal courthouse was worse than I had imagined. Sensing a certain victory, Dallas Republicans had flocked down. All of the prospective Republican congressional candidates were present, preening and giving press interviews. I saw not one friendly face. The members of the court were extremely solemn as we made our limited arguments. I, of course, argued that it was far too late in the day to unscramble the egg and start redrawing lines of the congressional seats, because any redrawing would necessarily spill over into adjoining districts. My opponents pooh-poohed any problems. The court advised that we should be at ease and went into conference. The hubbub arose again into a lot of good-old-boy poking and laughing after the judges departed. As for me, some of the *Chariots* bravado had worn off. In short order, the court returned and announced the result, by a vote of two to one, Justice and Johnson prevailing, they ruled that time was too short and the election would proceed under our plan. Never in all my life did I witness air vacating a room so

rapidly. There were audible gasps as deflation set in. All of the Republican candidates, as they saw their chances vanish, began to wonder if they could get a refund on their filing fees. How sweet it was! I simply levitated my way back to my office, feeling some kinship with those who have near-death experiences. My client Jim Mattox was so involved in his race for attorney general that he didn't have time to call to congratulate me, but the lack of accolades did not detract one whit from the sense of victory I felt. In fact, as I write these lines twenty years later, the savory feeling returns.

Before 1982 was over, George Korbel and I, along with our allies, had pretty well remade the entire congressional, as well as the state house and senate, redistricting maps. A lot of decent Democrats, many of them minority candidates, got elected as a result, including Johnny Bryant to Congress. In the legislative session of 1983, with a Democratic governor in office, the legislature adopted our court-ordered congressional plan as the new law. This brought an end to the lawsuit and nullified the effect of the Supreme Court decision, for, after all, redistricting is a legislative process. As a result, the old Mattox seat was preserved for a decade, despite the fulminations of Clements and the Dallas Republicans. The final chapter for Korbel and me came during this 1983 legislative session. By this time, I had become head of litigation in the office of newly elected Attorney General Mattox. As I explain elsewhere, Mattox was elected attorney general and lured me over to take responsibility for a portion of the operations.

One little detail remained—the resolution of the lines of a Texas senate seat in Houston, Harris County. Now, of all things, I was representing the state of Texas after having sued it almost constantly for the previous fifteen years. Predictably, George and I ended up in a massive disagreement. Everyone was determined to ensure a Black senate seat in Houston. Since Barbara Jordan's departure to Congress, the Texas senate had resumed its lily-white status. Craig Washington was pretty clearly the ablest and most articulate member of the Texas house and the acknowledged front-runner for a state senate seat. Craig had drawn a senate district that he wanted implemented in the final settlement of the redistricting wars. George vehemently insisted that the end result would be to injure the chances of an adjoining Hispanic seat and that Craig was pulling in more minority voters than necessary. I told him in no uncertain terms that Mattox was committed to the configurations spelled out by Craig Washington. George's memory and mine differ somewhat at this point. He insists that I threw him out of my office, an unlikely event given his enormous size and strength. My memory is that he grabbed up his files and stormed out, accusing me of being a tool for the establishment. My position prevailed, and Craig came to the Texas senate. George and I had a frosty year or so, long since forgotten and forgiven. He remains the most steadfast of friends and a tireless champion of the underdog.

21
"The Times They Are A-Changin'"

IF YOU HAVE READ THIS FAR, you know that changes were taking place in my life as the 1970s came to an end. An era was over for me personally and for the society that I had known. It seems to me that the Armadillo World Headquarters closed and Ronald Reagan was elected president in the space of a few weeks. These two events alone should have alerted us that we'd better buckle our seat belts and hold on tight. When the dust settled, Ann had gone into an alcoholic treatment facility, and our marriage had foundered and dissolved. Then Ann got elected state treasurer; my longtime law partner, Sam Houston Clinton, got elected to a judgeship, thus ending our law partnership; and I did the unthinkable and went to work representing the state of Texas. Last, but by no means least, I formed a new romantic relationship.

Despite the occasional accolades and the somewhat mythic escapades, by the late seventies, I had begun to feel stymied. The big social-change lawsuits were winding down. The practice of law was becoming just that, going through the motions. I had never been content with the nitty-gritty of the law operation—dealing with clients, sending bills for services, being courteous to mulish adversaries. Ann's election in 1976 to the Travis County Commissioners Court had been a major thrill, but the aftermath was a good deal less pleasurable. Initially, being Ann's sidekick in the political mainstream was sort of fun. Shortly, though, I found myself uncomfortable. I don't think it was because I was taking a backseat to Ann; I had always done that in our social life, but that could well have been a source of discontent. I know I was not at ease in the respectable circles to which she was drawn. The anarchist side of me made me ill suited for conventional behavior. For a while, I discharged my escort duties in reasonable fashion, but down deep this role did not square with my self-image. I thought of myself as a maverick, a dissenter, and a troublemaker. Much of this is now hindsight, but I am certain that I was not destined to fit into polite society. In early years, when wiser friends counseled that every child must rebel against his or her parents, I rejected that notion and claimed I never felt the urge. I now suspect, as I have become somewhat more self-aware, that it was my parents' trappings of respectability that I rejected so vehemently. The thought of big houses, country clubs, golf courses, and tennis clubs gives me an absolute rigor. Somewhere inside of me, I feared that my new role as consort was hurtling me toward the very life I had fled for so long.

In the midst of this restless period, Guy Herman showed up in my life as our firm's law clerk. Sam and I had reached the stage of prosperity that we had begun to hire and underpay a part-time law clerk to help keep the place afloat. Guy had ideal credentials. He had been tossed in jail as one of the students protesting against the cutting of the Waller Creek trees on the UT campus. This dispute had been the opening salvo of a long-running battle between campus radicals and the UT administration, as personified by Board of Regents Chairman Frank Erwin. Guy had gone on to be a prime mover in the organization of the UT Shuttle Bus Drivers Union and a leader in the union's long, bitter, and ultimately successful strike for recognition. Guy, with his

boundless enthusiasm and capacity for behavioral flaws, appealed to my renegade side, which seemed to be asserting ascendancy after a long period of dormancy.

Before long, Guy had recruited me to play on the city league softball team, which he had organized. The team was composed principally of shuttle bus drivers and a few other societal malcontents. Everyone was much my junior. It had been many years since I had played the game; indeed, I had not played team sports since my youth. Nevertheless, everyone seemed tolerant of my shortcomings, and, frankly, the camaraderie that team play supplied proved a major source of enjoyment. I had never been one of those men who had an outside male life—no poker nights, no golf foursomes—nor had I ever indulged in the classic Texas male passion for hunting and fishing trips. My sudden involvement in softball was not well received at the house. It may well have been a straw in the wind that hinted at a drifting apart within the marriage. It didn't seem so at the time; rather, it was the first frivolity I had enjoyed in many a year.

While I was cavorting around the softball diamond as an escape from the drudgery, it turned out that my partner, Sam Clinton, was also beginning to run out of gas with the law practice. We were bitching one day about the dismal state of the Court of Criminal Appeals. The governor had recently appointed a former state prosecutor to a vacancy on the court. This process was one of the least understood aspects of the state's elected judiciary. Lawyers understood, but few citizens realized, that the elective system was seldom honored in the real world of politics. In those years, the vast majority of the state's judges initially achieved office by appointment rather than election. As a judge neared retirement, he or she typically honored the process that produced him/her by resigning in the last year of his/her term. This enabled the sitting governor, who always came from the same ruling conservative establishment, to both appoint and anoint the retiring judge's successor. The new appointee then had a running start for the next election for the full term. Not only was the new appointee the incumbent, with all the power that entails, he or she was also already the designee of those in power. As a result, it was a rare thing for a lawyer or a lower-court judge to try to mount a primary challenge against the governor's appointee. The temporary appointment would typically be confirmed in an uncontested election and would translate into a lifetime appointment. That is how the system worked in one-party Texas, and that pattern has apparently resumed in recent years.

I told Sam he should run for the seat. I pointed out that the new appointee's name was James Vollers and no one but a few criminal lawyers had ever heard of him. No voter was going to know him, and no voter, when confronted with the choice of voting for James Vollers or Sam Houston Clinton, was going to choose Vollers. I am sure Sam understood this analysis as well as I, but perhaps my encouragement helped push him forward. The next thing I knew, he had filed for the office and was off and running. My guess is that his campaign was the least-financed statewide run of all time. My memory is that his total expenditure was in the $3,000 range. Sam won the primary handily and, with no Republican opponent, was in office before I knew it.

There never was a better partner than Sam Clinton. I say that in the sense the word is used in Texas. Sam was everything one hopes to find in a partnership. He was scrupulously honest in all of his dealings, conscientious about responsibilities, and just the kind of person you want to run the river with. Sam

was a scholarly and humane justice of the Court of Criminal Appeals throughout his lengthy career, and it's a damnable shame that we are not going to see any more like him.

For our twenty-fifth anniversary, Ann and I made a river trip down the Chatooga River in Georgia. This is the river on which many of the scenes in *Deliverance* were filmed. It was a hairy monster of a trip. A bunch of us had taken a Georgian, who was part of the Jimmy Carter operation, down the lower canyons of the Rio Grande. He reciprocated with the Chatooga venture, guides and all. Our party included the usual suspects: Land Commissioner Bob Armstrong, Frank Ivy from Austin, Dave McNeely of the *Austin American-Statesman*, and my compadre Bill Kugle from Athens, Texas, the finder of plaintiffs in East Texas. The trip to Georgia in a Winnebago was bibulous in the extreme, but the river was most sobering. Although all of us had whitewater experience, none had seen anything to compare with the rapids we encountered. We never could have done any of it without guides. They were typical river guys who simply lived their lives around the times of the year when the river was runnable. On our second day, we had all managed to survive a run through a falls with rapids below and were sprawled on the bank in relief. Kugle, the most intrepid adventurer I knew, declared that he had had enough terror for one day. At about that point, one of the guides came down the rapids solo, spinning his canoe with a great show of bravado as he came to shore. McNeely, a very physical man, couldn't take this showmanship. He leapt up and shouted at the startled young man, "Show us your dick." It was apparent that we flatwater Texans were over our heads.

The river had been exciting, but the trip worrisome. Ann's involvement with alcohol suddenly seemed totally out of hand. There had been some reason for concern in the past, but this trip had upped the ante considerably. It struck me that Ann had fallen victim to the perennial risk of successful politicians—beginning to think they are bulletproof. The political life is full of hazards. The hours are long, the stress is high, and the temptations are great. Having a few drinks with colleagues becomes the norm, and before you know it, you're sloshed. But everyone covers for you, because they like you or because you have power or because it's our nature to look the other way. In any event, I did not step forward at the time and try to reverse the course, assuming I had the power to do so. I let the issue slide, and as a result, the gulf between us continued to widen as time passed.

In 1980, the whole landscape changed for me. Ann went into an alcohol treatment program in the fall, a period of wrenching emotion within our family. In November 1980, Ann was reelected to the commissioner's court without opposition, and Sam Clinton was elected to the Court of Criminal Appeals. I was hanging out with my softball buddies and had taken up running as a tonic for all the chaos around me. By early 1981, it was apparent that Ann and I had come to the end of our run, and I moved out and into an apartment. The kids were pretty well raised by this time, away in college or boarding school. The energy for hanging together just wasn't there. Our marriage had been dramatically strong for many years. We had produced four very special children and had together taken immeasurable joy in the parenting experience. We had been fixtures, of a sort, in the liberal Democratic community of Texas and had a string of accomplishments that, probably, neither would have achieved on our own. The end was a shock, but seemed inescapable.

There were other signs of the changing order, not just those in my personal life. Austin had become a boomtown. High-rise office buildings were going up everywhere. High rollers driving sports cars loomed all around. In the good old 1970s, every other car seemed to be a VW van containing a bunch of freaks who were taking it easy down life's highways. Now it was Beemers and blow-dried hairdos. It was god-awful. Old gathering joints disappeared in the rush to growth and gelt—Louie's Bar on Red River, where I idled away much of my youth; Caruso's on Sixth; Jake's on Fifth; the Alamo Hotel, where LBJ's brother Sam resided; and, most sadly, the old Split Rail Tavern.

The final death of the Split Rail was a watershed in the decline of the radical left in Austin. In earlier times, Sunday nights at the Split Rail had been an institution. It was located on Lamar just south of the Colorado River, and it was here many Austinites got their first chance to hear Kenneth Threadgill yodel away the evening. In fact, my bride, Sandy, claims it was hearing Threadgill at the Split Rail that caused her to forsake California and remain in Texas. The Rail was closing, and two of Austin's most energetic activists, Bobby Nelson and Martin Wiginton, decided to try to keep it going as a radical collective. Bobby, an outspoken feminist, had practiced law in the city's counterculture firm with Jim Simons, Cam Cunningham, and Brady Coleman. Martin, who had been in law school with me, had been one of the state's principal radical organizers in the mid-1960s and had persevered. He had been a prime mover in putting together the Radical/Lawyer Conference in Wimberley in the late sixties, antiwar demonstrations everywhere, and most of the mischief making that had roiled Austin throughout the seventies. Together, Bobby and Martin had been fixtures in the Austin music scene for a number of years. They later ran the sainted Alamo Lounge, before the wrecking ball took down the hotel and the lounge with it. They then opened Emma Joe's, named for the radical icons Emma Goldman and Joe Hill. At these locations, many of us had our first opportunity to hear such luminaries as Lucinda Williams, Nanci Griffith, Butch Hancock, Lyle Lovett, and a host of other music legends.

The Split Rail collective was founded upon, and foundered upon, the old radical dream of a workers' society—no bosses, no owners, in short, a communal operation. After the Rail reopened, stories of conflict began to percolate through the community, some perhaps apocryphal. The first hints of trouble came with the conflicts between the wait staff and the old redneck clientele. The Rail, located at the gateway to south Austin, had been a favorite watering hole of bikers and construction workers. When they returned to their old haunt, they found a serving staff composed almost entirely of radical feminists. The waitpersons announced that they were no longer going to serve beer to male chauvinist pigs. Martin is reputed to have argued that this crowd paid for their beers and they needed to be served if the place was going to stay open, an argument that was poorly received. The next dispute centered on white rice versus brown rice. Members of the collective argued that it was a travesty to serve white rice, with all of its nutrients removed. Again, Martin argued that the patrons overwhelmingly preferred white rice. Guy Herman and I lunched there on occasion during this phase, as a show of support for the undertaking, and we did encounter a certain dissonance in the operation. Matters came to a head during a busy lunch hour when Martin found one member of the collective, who was supposed to be cooking, taking his ease smoking a joint in the back of the shop. Martin told him to get back to work. The response was, "Who in the hell are you to tell me to go to work?" The

upshot was that Martin told the member of the collective that he was fired, whereupon the latter promptly came back with, "You can't fire me, we are all equals." A meeting of the collective was called, and the group voted to fire Martin and Bobby. Unfortunately, Bobby and Martin were the only ones who had any money in the deal, and their names were on the lease.

The dispute escalated totally out of hand. The dissidents seized the Rail, changed the locks, and declared their intention to operate the business. Then the shit really hit the fan. Bobby and Martin sued their comrades and ultimately had to resort to evicting them with the help of the gendarmes. The Rail reopened behind the picket lines of the unhappy members of the onetime collective. The struggle produced a huge fissure in the longtime radical community. Guy Herman and I debated our response and concluded that we sided with Martin and Bobby, crossing the first picket lines of our lives. Obviously, the place was doomed, as was the solidarity of the new-left world of Austin—all in all, a sad moment. The Split Rail has long since been razed to be replaced by some chain eatery; with it went another piece of Austin history.

Life on the outside was a puzzle to me after having been married for all of my adult life. I took up running with a vengeance, lumbering around Town Lake with great gusto, even routinely running the Capitol Ten Thousand race. I ended up playing on a couple of softball teams, pitching horseshoes with construction workers at a joint on the east side called Beer Park, and generally cavorting like an adolescent. I taught part-time at the UT Law School during this time, and that at least lent me an air of respectability, deserved or not.

Somewhere in this period, Guy Herman became concerned with the threatened discontinuance of Amtrak rail service to Laredo. Nuevo Laredo, for my generation of Texans, was our Sodom and Gomorrah rolled into one. Major mischief was available all up and down the Rio Grande, but Laredo and its companion city across the river were the most accessible from Austin. Over the years, many a late-night pilgrimage had rolled out of Austin in response to "that border-crossing feeling." In our old age, the train was the obvious solution for such moments. We did not have to risk life and limb on those harrowing automobile runs, and we could sleep off our hangovers in the comforting hands of Amtrak on the return trip. It became Guy's mission to demonstrate the heavy support for the Austin-to-Laredo run by organizing group excursions on the train. His groups consisted largely of habitués of the Raw Deal, everyone's favorite local bar at the time. Essentially these were the refugees from the old Scholz Garden regulars, together with the survivors of the demise of the Armadillo. But the group was sufficiently diverse to give real character; on one occasion Guy even managed to lure my eighty-year-old mother to join in. All of the trips were memorable. The routine was fairly simple. The service was offered on alternate days. The train left Austin on a Friday afternoon and arrived in Laredo in the early evening. It left Laredo on Sunday morning at some ungodly hour like seven o'clock. One always stayed at La Posada, the charming hotel on the Texas side abutting the Rio Grande. One could loll for hours around the pool listening to the marimba band and, as dusk settled over dusty Nuevo Laredo, stroll across the bridge to indulge in the traditional border pursuits: Ramos Gin Fizzes at the Cadillac Bar, lengthy meals at El Rincón del Viejo, wrestling matches, and, for the daring souls, a late-night tour of boys' town.

On our first trip, the forty of us were just about the right number to take one of the chair cars for our very own. This seemed better for us and assuredly

better for any other passengers. The train crew was most welcoming, as discontinuance of the service threatened their jobs. Midway down, someone hurried into our car to warn that one of our group was smoking a joint in the club car. This seemed to be pushing our luck just a tad in law-and-order Texas. The culprit was retrieved, and it was generally agreed with the trainmen that it would probably be wiser if our group stayed all together in our designated car. We felt as if we were a sealed railroad car crossing some international border, but it worked.

On a later trip, Brady Coleman and I were taking our ease around the La Posada pool on a Saturday afternoon. Brady, as you may remember, was a left-wing Austin lawyer, part-time hippie, and all-time boon companion. We were watching our companions disport themselves around the pool. The group included law professors, aging beatniks, young nubiles—an odd conglomeration to be sure. I noticed that some couples across the pool were eyeing us with interest. Finally, one of them, a young man, arose and came over to Brady and me and introduced himself. He explained that his group had been watching us and, as we seemed to be having so much fun, they wondered, "What do you do?" Brady and I were at a total loss for words; neither of us knew what we did that produced so much fun. Sensing our confusion, our new acquaintance explained his inquiry: "For instance, we are all Firestone tire salesmen from Killeen, and we won a trip down here. We wondered what it was that you did." This proved an even more difficult inquiry, because there was no possible way to explain to the outside world the bonds that held us together and provided so much enjoyment. We finally suggested that we were a traveling softball team, and that seemed to satisfy our newfound friend. Yet the question posed was legitimate. Why were we so close? There were forty or so Austinites on this excursion, many of whom did not know one another before the train ride. In fact, it was on this particular trip that I met for the first time my future wife, Sandy Hauser, a testament to the fact that this seemingly disparate group had an enduring bond. The best explanation for our camaraderie may be in these words from an early Bonnie Raitt song, "Your Sweet and Shiny Eyes":

> Young and wild, we drove down 500 miles of Texas highway to the Mexican border. As the day was coming on, we crossed the Rio Grande River, and we swore we'd have things our way as we happened to come into Nuevo Laredo . . .

That's the way we were, no matter our chronological ages: young and wild and determined to have things our way.

22
The 1982 Elections:
Triumph of the Yarborough Democrats

IN THE LATE 1950S IN TEXAS, a certain political group, known as the Rebuilding Committee, made periodic forays into the political arena. Often, the spokesman for the organization was Arch Fullingim. Arch was the editor, publisher, and what-have-you of the *Kountze News* and the personification of a yellow-dog Democrat. If you didn't watch yourself, you could become enthralled with Arch's descriptions of the Byzantine feuds in Hardin County politics—the principal topic of his newspaper. Hardin, located just north of Beaumont, was the jumping-off point for the Big Thicket. Arch was a tireless champion for a Big Thicket park. His constant barrages directed at "Timber" Charlie Wilson, as he called him, probably helped prod the congressman to support the ultimate passage of the Big Thicket park bill. Arch's other passionate goal was to get the Republicans out of the Democratic primary so that we would have some chance of nominating halfway decent statewide candidates. He was, of course, a staunch advocate for Ralph Yarborough and his brand of populism.

The makeup of the Rebuilding Committee was somewhat amorphous, and if it was funded, I doubt one could ever locate the true source of its money. Its message was always clear: Get the Republicans into a primary of their own so they would quit polluting the Democratic primary. One problem for some years was that the Republican Party did not hold primary elections. Even when Republican primaries were held, they were conducted in only a portion of the state's counties. The state law throughout the 1960s mandated a primary only if the particular party's gubernatorial candidate garnered at least 200,000 votes. But even when this vote was achieved, nothing required primaries in every county. In fact, it was not until the mid-1990s that the Republican Party managed to hold a primary election in every Texas county. In this environment, it was not surprising that many voters who considered themselves to be Republicans continued to vote in Democratic primaries. Texas did not have, and still does not have, a party registration statute that required voters to identify themselves by political party at the time of registration. It is the Texas view that by showing up to vote in a primary, the voter declares membership in that party that day, a declaration that can be abandoned the next day. This was a perfect situation for the conservative oligarchy that controlled the state. Their voters were normally able to control the Democratic primaries, and if by chance some progressive slipped through and got the Democratic nomination, the conservatives would simply support the Republican in the November general elections.

Liberal frustration with this reality was a constant theme from the 1950s through the 1970s and explained the role of the Rebuilding Committee and, to some degree, the election of John Tower in 1960 and again in 1966. Liberal activists despaired of changing the electoral system through legislation, for the beneficiaries of one-party Texas politics controlled the legislature. The only hope seemed to be the emergence of a viable Republican Party that held

meaningful primary elections that would siphon off ultraconservative voters from the Democratic primaries. Thus it was that many liberal voters in Texas took the fateful step of actually voting for the Republican John Tower. The Rebuilding Committee urged liberals to support Tower in both of his early races as the least offensive alternative and as a way of fostering the emergence of a real Republican Party. Many progressive voters paid heed.

The 1961 special election for the U.S. Senate seat was to replace Vice President Johnson. Johnson had pushed through the Texas legislature a bill that enabled him to appear on the November 1960 election ballot both as a vice-presidential nominee and as a nominee for reelection to the U.S. Senate. With Kennedy's election, a special election to fill the Johnson seat was required. All of the decent Democrats—Henry Gonzalez, Maury Maverick Jr., and Jim Wright—had been eliminated in the first round, and a runoff ensued between Tower and "Cowboy" Bill Blakley. Blakley had been appointed by Governor Daniel to fill the interim vacancy. Proving the old saw about bad pennies, Blakley had been appointed to another Senate vacancy three years earlier, had been defeated by Ralph Yarborough in the ensuing special election, and now here he was again. As best anyone could determine, he had no qualifications except a big bankroll and intimacy with the conservative establishment. He had distinguished himself early on in his Senate career by his grilling of Robert Weaver. Weaver had been nominated by Kennedy to a cabinet-level position, the first Black so chosen. Blakley chose to demonstrate his affinity with segregationist Texas by pouncing on Weaver during his confirmation hearings: "I hold in my hand a review of a book of yours. The review is authored by J. Crow, Realtor. Do you know Mr. Crow?" Weaver responded that he did not know Mr. Crow personally, but he had certainly encountered his point of view. It is not clear when Blakley realized that J. Crow stood for Jim Crow, but it forever tarnished him in the eyes of Texas liberals. Ann and I, like many others, simply refused to vote. A vote for Tower against Blakley was an easy choice for many other progressives who were sick of the segregationist old guard. As a result of stay-at-homes, and nose holders voting for Tower, Tower won in 1961, and thus began the birth of the Texas Republican Party.

Five years later, John Connally was at the peak of his power as governor, and it was time to take on Tower again. The old-guard choice was Waggoner Carr, the current attorney general and former speaker of the Texas house. Carr, for many Texas liberals, was just another piece of the same old distasteful pie. As described earlier, Carr had gone down with Connally to San Marcos to warn the marching farmworkers against continuing their peaceful and laborious march to Austin in support of a minimum wage. This attempt to badger them out of continuing their march was, to many of us, intolerable. Of even more significance, Carr had been speaker of the Texas house when all the segregation bills of 1957 were slammed through the legislature, none of which could have happened without his support. The Rebuilding Committee, undoubtedly funded in this instance by Republican sources, was out in full force in November 1966 urging support for Tower. The arguments were many, including revenge against reactionaries and building the Republican Party. Moreover, Carr's election would only diminish Ralph Yarborough's patronage powers during the Johnson administration. It was this election more than any other that crystallized the notion of the kamikaze liberals of Texas. We'd rather go down in flames than be trapped supporting reactionary Democratic candidates. Thus it was that I cast my one and only vote for a Republican

candidate for public office. I am sure that many Texas liberals joined me, and Tower won reelection handily.

This historical digression has as one purpose the introduction of the elections of 1982 and the explication of how, by 1982, a functioning Republican Party had come into being. The atmosphere was no longer that of a country club board meeting, as real people were occasionally contending for nominations in the primaries. Bill Clements in 1978 became the first Republican elected to statewide office in the twentieth century. The Clements election was partly attributable to the half-assed campaign run by his Democratic opponent, former Attorney General John Hill. Nonetheless, Clements was serious about legitimating a statewide Republican Party, as were the talented people he brought into state government.

The primary and general elections of 1982 produced a watershed year in Texas politics, and a personal watershed as well. With no Democratic incumbent in the governor's mansion, a cluster of serious Democrats sought the nomination to oppose Clements's reelection bid. Our river-running buddy Bob Armstrong gave up his post as land commissioner to make the race and was certainly the most progressive of the candidates. However, Buddy Temple, heir to the East Texas lumber fortune, jumped in also, and he had legitimate claims to liberal support based on his record in the Texas legislature and as railroad commissioner. Finally, Attorney General Mark White fell heir to the conservative Democratic mantle. The reality was that all of these candidates represented a significant departure from the segregationist old guard. Bill Hobby was by now permanently installed as lieutenant governor, thus no race emerged there.

In 1982, for the first time in memory, fascinating races emerged "down ballot," as we say. Ann filed for state treasurer against the incumbent Warren Harding. Jim Hightower, former editor of the *Texas Observer*, filed for agriculture commissioner against the incumbent Reagan Brown. Jim Mattox abandoned his congressional seat and filed for attorney general, and Garry Mauro sought Armstrong's vacant land commissioner post. The startling thing about these four candidates was that they were all from the Yarborough wing of the Democratic Party. These were certifiable liberal Democrats, as that term was understood in Texas at the time. Ann and Mattox had both begun their political lives in Dallas under the wing of my old law partner Oscar Mauzy and his Senate colleague Mike McKool, and thus were firmly rooted in Yarborough's progressive politics. Hightower had worked in Yarborough's Senate office, and Mauro had his political baptism driving Yarborough around the state in his last U.S. Senate campaign. The reason these people had the temerity to run in conservative Texas was because, at long last, the Democratic primary had begun to resemble somewhat the Democratic electorate and no longer drew in the entire political spectrum of the state.

This point can be made fairly quickly by a look at some numbers, which is always a good way to understand the workings of elections. The dimensions of the change can be seen most dramatically by comparing the turnouts in 1972 and 1982. The 1972 presidential election, pitting Nixon against McGovern, represented a banner political year. In Texas we had a barn burner of a spring Democratic primary, with the liberal legislator Sissy Farenthold challenging the establishment in her race for governor. Still, this alone cannot explain the numbers. The Democratic primary in 1972 drew 2,191,000 voters. The Republican primary held the same day drew only 113,000 voters. The vast

disparity in turnout is not explained by a paucity of Republicans in the state, for in the general election that same year, the somewhat goofy Republican candidate, Henry Grover, received 1,534,000 votes against Dolph Briscoe's 1,633,000 votes. Obviously, enormous numbers of conservative Republicans were still voting in the Democratic primary, and then voting for Republican candidates in the November general election.

By 1982, Texas had grown by 3,000,000 people over 1972, with a total population approaching 14,000,000. Yet the total vote in the Democratic primary of 1982 was roughly 1,300,000, a drop-off of almost 900,000 voters from the 1972 primary. The Republican primary that year more than doubled the 1972 turnout, with a total vote of 265,000. In November of 1982 the total vote in the governor's race was essentially the same as in 1972. These numbers suggest to me that the November electorate did not change radically over the decade, while at the same time the Democratic primary was revolutionized. The effect on that year's Democratic primary elections was dramatic. Mark White, the conservative choice, was able to defeat an underfinanced Bob Armstrong and Buddy Temple for the governor nomination. But the four old-time Yarborough Democrats were nominated for the other offices. Ann defeated Warren Harding for the state treasurer's nomination, becoming the first woman nominated in her own right to statewide office. We always say that to explain the Ma Ferguson phenomenon. Ma was elected governor in the late 1920s after her husband, Pa Ferguson, was impeached and removed from the governor's office. For better or worse, Ma Ferguson has always been viewed as a surrogate for Pa, who continued to run the affairs of state during Ma's term.

The victories of Hightower, Mattox, and Mauro were perhaps not as groundbreaking as Ann's, but they were quite significant. The thought that Jim Hightower, the muckraking editor of the *Texas Observer*, was a nominee of the Democratic Party was pretty earthshaking. Granted, Jim's race had been aided somewhat when his opponent, Reagan Brown, thrust his hand in a fire ant mound to demonstrate for the press the harmless nature of the pests. There were memorable photos of Brown wringing his hand after the full pain of the stings began to take hold. Nonetheless, whatever might explain these individual victories, the Democratic primary had forever changed. Who would ever have thought there could be such a time in Texas? For me, it was particularly shocking. Here were my soon-to-be-ex-wife Ann, my client Mattox, and my ex-tenant Hightower—all in the forefront of Texas politics.

The November elections were a Democratic sweep. At the head of the ticket, Lloyd Bentsen won his Senate reelection, Mark White ousted Clements, and centrist Bill Hobby, first elected in 1974, continued his seemingly permanent hold on the lieutenant governor's post. The entire ticket worked to produce a heavy Democratic voter turnout. This was how it was supposed to be, a balanced ticket, albeit all white at the top, appealing broadly to the various constituent groups within the party. At inauguration time, Ann, Hightower, Mattox, and Mauro held a joint festivity, and one memorable photo shows the four of them striding together toward the state capitol to be sworn in. Of course, as we know, there is only one constant in politics—Murphy's Law—and everything sooner or later is going to get screwed up. But, for the moment, it was heady indeed.

Sometime in December, Mattox called to ask whether I would be interested in coming to the AG's office to take charge of the legal side of the operation. The possibility was immediately intriguing. Having spent a goodly portion of

my life suing the state, I had a reasonable picture of the nature of the operation and decidedly strong opinions about its shortcomings. I had never been particularly close to Mattox, but we had been in the same political world for ten or more years around Dallas and Austin and I assumed that we could work together.

Despite the constant campaign rhetoric of being tough on crime, the fact is that the Texas attorney general has no responsibility for the prosecution of criminals; that power is vested in local district attorneys. The function of the office is purely civil—to represent the state and its institutions in all civil proceedings. Given the size of the state and the breadth of its holdings, this is quite a responsibility. The job Mattox wanted me to take entailed supervision of some two hundred lawyers and thousands of pieces of litigation—some highly complex and many run of the mill. I had run out of gas in the private practice, and my partner, Sam, was off being a judge, so this seemed a perfect opportunity to get a change of perspective. It was also a perfect chance to kick some ass and take names. Mattox was a total outsider with no establishment ties and a real penchant for stirring up trouble, thus I had little fear that this was going to be a typical bureaucratic experience.

I was sorely troubled about the enormity of the task of trying to get a grip on the state's litigation. I checked with my predecessor, Rick Gray, who had run Mark White's operation. He advised that I should insist that I have control over the hiring of all lawyers; otherwise, I would be saddled with a bunch of political hacks who couldn't try lawsuits. I got that commitment and managed during my tenure to fend off most of the ne'er-do-wells. I knew also that I would need to bring with me some lawyers whose judgment and loyalty I could trust. Clyde Farrell was sharing office space with me on Seventh Street and had an outstanding record in consumer law. Mary Keller was upstairs as legal director for the Texas Civil Liberties Union, and understood well the complexities of constitutional litigation. I figured that if they would come with me, between the three of us we could sort our ways through the worst of the underbrush. Mattox agreed to bring them along, and off I went into the public sector.

None of us who moved in with Mattox on the first of the year 1983 were prepared for what hit us, I least of all. I have likened it to encountering the *Flying Dutchman* sailing across the ocean without a crew and attempting to take its helm. All transitions in government are problematic, and perhaps this was no worse, but the reality of litigation is that it does not call a halt just because a new attorney general takes over. Understandably, all of Mark White's top staff were gone overnight, and though many tried to be helpful, I did not even know what questions to ask until it was too late. Each day brought a half-dozen or more surprises, most of them unpleasant.

While he was attorney general, Mark White had persuaded the Texas legislature to fund the computerization of all the lawsuits pending in the AG's office. The argument was cogent, as this would provide ready access to all pending cases and their status. This modernization would supposedly solve the recurring problem of assistant AGs failing to show up for court settings and other embarrassing misadventures. I had no experience with computerized litigation files but assumed that this information would enable me to get on top of the most problematic files in short order. A directive was issued that every lawyer was to produce a printout of their active files and that I, or someone for me, would meet with each lawyer to review the cases. For my maiden outing, I

chose the State and County Division of the office, for I knew from experience it housed the most worrisome cases. All of the federal court constitutional cases were in that division, as well as the serious damage suits against the state or its officials. The division chief had departed with White, so I chose to meet first with the assistant chief, who was a holdover from the previous administration. I assumed his case list would be slim, and he would be the best prepared to answer any questions about his files. I was right in one of my assumptions.

The computer printout reflected that he had eight active case files, a very modest number. When I got to his office and asked to review those file folders, his secretary was unable to locate four of the files. The acting chief was unable to shed any light on the whereabouts of the files, nor was he able to give me any pertinent information as to the status of the missing cases. Lawyers in litigation are totally dependent upon their case files; you can't function in court without your file. I was terror stricken, as I envisioned missed court appearances, default judgments, and the full array of horrors that give trial lawyers sleepless nights.

For the first few months of the Mattox era, almost every day brought a new fright. In the second week, I received notice of an upcoming argument before the U.S. Supreme Court in the alien schoolchildren case, one of the most critical issues of the day—whether the state must provide public education to the children of illegal aliens within its borders. I panicked. I could find no one in the office who even knew of the matter. A call to my predecessor revealed that the case had been farmed out for argument to someone outside the AG's office. Well, at least we weren't going to fail to show, but that was a hell of a way to run the state's business. Here was a case with enormous implications for the state and its school districts being presented to the U.S. Supreme Court by someone other than the attorney general's office, but it was far too late to rectify this imperfect situation.

During the campaign, Mattox had quite rightly attacked the "outside counsel" practices of White's AG administration, promising to bring the state's lawsuits back into the office. The outside counsel gambit had become a true mess. Typically, private law firms were hired to take over state lawsuits that seemed too difficult for the office to handle. A variety of problems emerged; among them, the state lost control of its important cases, and private law firms frequently saw the state treasury as a cash cow that could be billed endlessly. Mattox was determined to reclaim the cases that were in the hands of outside lawyers. The first big one was the *Ruiz* case, that never ending saga concerning the governance of the Texas prison system. Some years earlier, Wayne Justice had found the Texas prison system to be rife with constitutional violations and had ultimately imposed a special master, an agent of the court, on the prison system with responsibility to review conditions and periodically report to the court progress, if any, in curing the constitutional deficiencies. For the state, this lawsuit had taken on a Br'er Rabbit and the Tar Baby mode: the more the state struggled to free itself from the constraints of Justice's orders, the more entangled it seemed to get.

The *Ruiz* litigation had been a major political football between White as attorney general and Clements as governor, with Clements charging as part of his campaign attacks that White had botched the prison litigation. White's response had been to farm the case out to Fulbright & Jaworski, the Houston-based mega law firm. This move by White had gotten rid of his political problem. He could say that he had turned the case over to one of the state's

most prestigious law firms for them to solve, and at the same time, it won him points with the firm, which was one of the state's big-time political contributors. The reality for the lawsuit was not so salutary. Somehow—and this was probably not too difficult to do—the Fulbright firm had infuriated Judge Justice, and the difficulties of the case had escalated. As an added frustration, they were billing the state about $100,000 per month for legal services and expenses. Reviewing lawyers' bills is not a confidence-inspiring experience. The state was being billed for legal-research memos by lawyers based in Washington, D.C., who had no apparent tie with the case. It looked as if we were an easy target for firm members who needed to generate more billable hours. One of my early duties was to retrieve the *Ruiz* litigation and bring it back to the AG's office where it belonged. We struggled over their bills and finally resolved a reduced payment to get Fulbright on the road. I would like to say that during my Mattox tenure we were able to resolve the *Ruiz* mess, but nothing could be further from the truth. We put a lot of talent on the case and spent enormous energy trying to find a solution, but it still goes on, approaching its thirtieth anniversary. But the battle with the Fulbright firm over *Ruiz* was just the warm-up for another, much more serious conflict with the firm.

Another aspect of Mattox's determination to take control of the state's litigation caused further ripples. Mattox and I were strongly of the view that the attorney general's prime responsibility was to the people of the state. This meant we were going to evaluate the state's litigation posture to ensure that the stance was consistent with what the attorney general saw to be the overarching public interest. This formulation may seem perfectly sound and noncontroversial, but, believe me, this was a radical departure from the past. No progressive had occupied the attorney general's office since Jimmy Allred in the early 1930s. In the years since Allred's tenure, the office had been, in our view, simply a mindless extension of the conservative establishment that ran the state. As a result, the racial segregation statutes had been vigorously defended, along with palpably unconstitutional restrictions on voting and free speech. If a state agency had some stupid rule it wanted to preserve, in the past, the AG would defend it to the death—a bad policy in our view and a wasting of state resources.

The first test of Mattox's will came in an encounter with the self-important regents of Texas A&M University. Although women had reluctantly been admitted to that university, regents' rules prevented women from playing in the Aggie band, a seemingly sacrosanct male preserve. A federal lawsuit challenging the exclusion had begun during the White administration, and about the time Mattox took over, a Houston federal court ordered A&M to begin admitting women to the band. The ruling caused a furor among Aggie alums as well as the Board of Regents. Mattox announced he was not going to appeal the ruling and that A&M should comply with the court's order, reasoning that an appeal was frivolous, as the practice was wrong. Aggies went nuts. The office was besieged with complaints about our arrogance and lack of respect for tradition. Mattox stood his ground, and the regents announced that they would appeal on their own. We told them they couldn't and we would block any attempt if they tried to appeal. The regents persisted, and we were finally forced to assert, quite properly, that only the attorney general could represent the state and its institutions in court. The regents finally caved, and women were grudgingly admitted to the band. As best anyone can determine,

the institution continues to prosper, even though there are dames now tooting the clarinet. Mattox took some political heat, but he always seemed to revel in the pressure.

The issue of sodomy was also on our plate as soon as Mattox took office. The Texas Penal Code made deviate sexual intercourse a crime. Deviate intercourse was defined as "any contact between any part of the genitals of one person and the mouth or anus of another person" of the same sex. Federal Judge Jerry Buchmeyer of Dallas had declared the statute unconstitutional in a suit sponsored by the gay community. The criminalization of homosexual conduct had been, and still is, an issue of enormous symbolic concern within the gay population, and although prosecutions were rare, the statute posed some real-world problems to the community. Judge Buchmeyer's decision had come late in the White era, just weeks before the general election contest between White and Clements for the governorship. White had led gay activists to believe that he would not appeal the trial court ruling. Unknown to that portion of the electorate, White had mailed a timely notice of appeal two days before the general election. It was only after the election that the gay community learned that an appeal had been filed. Two months later, when Mattox took office, one of the first issues was what to do about the pending appeal. Mattox preferred to dismiss the appeal but left the decision in my lap.

Strangely, this case presented just the converse of the A&M band dispute. Here, no one, aside from some in the outer reaches of the religious right, seemed to have much interest in preserving the law. Prosecutions under the statute were largely nonexistent, and the law enforcement community had minimal stake in the outcome. In fact, Henry Wade, the Dallas district attorney, had been one of the defendants in the trial court and had proffered no defense of the statute. On the other hand, the legal issue was most thorny, unlike the A&M case, in which the regents' practices were indefensible. Did the attorney general have the authority or right to fail to defend an enactment of the Texas legislature just because he disagreed with the law? The answer to that question was pretty clearly "No." In a pure separation-of-powers sense, the AG had no business trying to override the legislature; the governor held the veto power to nullify legislation, but that power was not given to our office. It was one thing for the AG to refuse to defend an enactment of some unelected state board, and quite another to torpedo a legislative enactment.

It seemed evident that this was going to be a recurring problem, and it was worthwhile to try to come up with a formulation that would help deal with this issue in the future. We came to the view that we would exercise our best legal judgments; if in that judgment the statute was not defensible on constitutional grounds or on the factual record, then the office was justified in dropping the defense of the statute. In the instance of the sodomy statute, it was defensible on purely legal grounds, for no appellate court had ever condemned similar enactments. On the other hand, there was no factual record to sustain the statute. In my view, Judge Buchmeyer's factual conclusions were fully supported by the evidence, and the state had put up no defense. On this basis, I advised withdrawal of the appeal. It was probably a cop-out rationalization to get to where we wanted to be, but at least we went through the exercise.

Once we withdrew the appeal, a district attorney from Amarillo, Danny Hill, took up the fight. First, Hill tried unsuccessfully to get the Texas Supreme Court to order the AG to pursue the appeal. Hill then sought on his own to pursue the appeal to the Fifth Circuit, arguing that he was affected in his

official duties by the trial court order. By now, what had been a quiet little strategy had become a full-blown brouhaha. Mattox had never had a particularly sympathetic press, and stories began to appear suggesting that the office had been taken over by a cabal of liberal bomb throwers.

Our efforts to prevent District Attorney Hill from protecting the sodomy statute were ultimately unsuccessful. The case was finally submitted to the full U.S. Court of Appeals for the Fifth Circuit sitting *en banc*, all fifteen judges—a judicial rarity. We argued that Hill could not pursue the appeal and that our decision to withdraw the appeal was within the prerogative of the attorney general's office; Hill argued that the sodomy statute was constitutional and should be resurrected by the appeals court.

For those who think there are few differences between Republicans and Democrats, this case is instructive. We lost by a vote of eight to seven. The seven dissenters were all appointed by Democratic presidents. The eight-member majority consisted of every Republican appointee on the court, joined by one Democrat, Tom Reavley of Austin, who wrote the majority opinion. The sodomy statute is still on the books in Texas, and homosexual activity is still a crime in the state. It was a valiant effort on Mattox's part, an effort that came within a hair of succeeding. I can certainly understand those who would question our authority to abandon the defense of a state statute; it was a close call on our part. The tragedy is that the legislative body may never produce the will to repeal the statute; to step up in the legislative arena on such an explosive issue is just too risky for most politicians. So we took our shot and missed. In 2000, a state court of appeals in Houston, by a 7-to-2 vote, ruled the sodomy statute to be constitutional, so the law remains on the books.

By the time Mattox had been in office for three months, controversy simply swirled around us. It was not just the litigation, but Mattox's own brand of personal confrontation. One of the other major lawsuits we inherited in its infancy was a suit against Mobil Oil over South Texas oil-and-gas properties that involved state-owned minerals. One highly controversial factor in the mix was the presence of Clinton Manges. Manges was both notorious and disreputable, and he had been a major contributor to the Mattox campaign. Effectively, we were on the same side as Manges in the case. The claim was that Mobil had failed in its duty as lessee of the mineral interests to fully develop the oil-and-gas potential of the properties. If Mobil had so failed, then valuable mineral interests would revert to the state, and other valuable rights would go to Manges. In the spring of 1983, Manges was probably the most controversial private figure in the state. Dubious political contributions, arrogant statements to the media, and a doomed effort to put a pro football team in San Antonio assured Manges of disastrous press treatment. He was constantly characterized, probably accurately, as another South Texas oil-and-gas freebooter. Despite repeated urgings from me and others in the office, Mattox would not disassociate himself from Manges. As a result, as I see it, we found ourselves in a most painful comic opera.

Our old friends Fulbright & Jaworski represented Mobil Oil in the person of one Tom McDade, who enjoyed—indeed seemed to cherish—the reputation as one of the most disagreeable and combative lawyers in the state. McDade and Mattox were made for each other. McDade's theory of defense of Mobil was that Mattox and Manges were engaged in a dishonest plot to shanghai that sterling public citizen Mobil Oil. McDade took Mattox's sister's deposition, and then things devolved into a total pissing contest. McDade ultimately

claimed that Mattox threatened to block all of Fulbright & Jaworski's bond business with the state as retaliation for McDade's conduct. The press loved it, and Travis County District Attorney Ronnie Earle pricked up his ears.

The next few months were totally nuts. Earle began a grand-jury investigation of Mattox and the office. The press, which was not fond of Mattox anyway, had a field day. Almost every morning we were faced with a new open-records demand for some aspect of office business. It seemed that even the most routine decisions in the conduct of lawsuits were being questioned as having ulterior motives. Mattox struck back, attacking Earle and the press as being the craven tools of Mobil Oil and the big corporate law firms. I ended up trying to keep the boat afloat, nurturing our young lawyers and a lot of others who had never seen such a firestorm. Out of the blue, I got subpoenaed to appear before the grand jury, not as some professional courtesy request to appear a few days later, but rather to haul my ass down there chop-chop. I was furious—still am. I thought the entire matter was a political witch-hunt. Mattox had simply trampled on too many toes and violated too many shibboleths. My sense then and now was that Ronnie Earle had decided it was his role to rein Mattox in.

Over the years I had advised dozens of clients never to testify before a grand jury and if they did, always to assert the Fifth Amendment privilege, even if they had nothing to hide. Grand juries are purely the arm of the prosecutor. District attorneys spoon-feed the jurors whatever they choose and typically obtain whatever criminal charges they wish. Occasionally, one hears the term "runaway grand jury." All that means is that the grand jury didn't routinely follow the wishes of the prosecutor. In recent times, we have had an excellent opportunity to watch the abuse of the grand-jury system by Special Prosecutor Kenneth Starr. You may have noticed that most of the lawyers who are in the criminal-law industry simply yawned when asked about Starr's use of the grand jury; squeezing witnesses before grand juries is what prosecutors do all the time. I knew all of this when I got my subpoena. Some fool notion got into my head that it would be inappropriate for me, as a reasonably high state employee, to exercise my right to remain silent, setting myself up for an utterly miserable afternoon.

The minute the door closed and I looked into the suspicious eyes of the jurors and the grim expressions of the prosecutors, it dawned on me that this might not be a piece of cake. Even so, I thought my charm would win out, but as the day progressed, it became all too clear that the DA had done a thorough job of poisoning the minds of the jurors, and I wasn't getting any smiles. Mind you, by this time I had been a pretty heavy-duty lawyer for twenty-five years, and even though I didn't know anything of consequence, I found the experience totally unnerving. It was indeed Kafkaesque. You didn't know where they were going with their questions; you didn't know whether they were trying to trap you in a misstatement of fact to try to catch you on some perjury allegation—all in all, it was a horrible experience. To cap it off, after I had tried to answer their questions, the district attorney pulled out the *Lawyers' Canons of Ethics* and read me a provision that says a lawyer must report any information he has about another lawyer violating the criminal laws. I was then asked whether I knew of any lawyer in the attorney general's office who had violated the criminal law. It was kindly explained to me that failure to answer this question might jeopardize my law license. When I explained that there were some two hundred lawyers in the office, this didn't seem to faze the

district attorney. They pressed forward. Did I know of any of them committing an unlawful act in Travis County in 1983? I visualized all of those dope-smoking young lawyers we had hired into the AG's office, many of whom, for better or worse, I knew socially. I declined to answer, and there ended my fun day with the grand jury. I left there shaken and much wiser about the potential for abuse of the process.

Earle and his staff cobbled together an indictment of Mattox, growing out of his run-in with the Fulbright & Jaworski firm. In order to try to make a felony charge, the DA alleged that Mattox's supposed threat to the Houston law firm constituted "commercial bribery," which would have been laughable if it hadn't been such a crippling blow at the outset of the Mattox administration. To convict Mattox of a misdemeanor would not require him to give up his office, but a felony conviction could lead to removal. Presumably this explains the tortured reasoning of the indictment, which came down in the early fall of 1983, after several months of investigation and press attacks. Twenty months later, Mattox, represented by one of Austin's most ingenious lawyers, Roy Minton, was predictably acquitted by a Travis County jury, but that twenty months seemed like a lifetime, although, in many ways, it was a very heady time, for with the indictment, most of Mattox's energies were directed to the criminal case, and he was seldom in the office. I got to be "pretend attorney general" for a couple of years without having to run for office. Mattox appeared to have complete confidence in me, and for all practical purposes, I ran the legal side of the operation for those years without much oversight.

Sometime after the indictment was issued we decided it was necessary to try to rally the troops. An agency of almost 1,000 employees was bound to be reeling a bit from the head of the agency being under criminal charges. A mass convocation of the entire staff was to be held at Sid Richardson Hall on the UT campus. We would demonstrate our resolve to go forward with the business of the office by this show of solidarity. On the appointed day, the jefes were all assembled on the stage: Mattox; Tom Green, his political aide; Harmon Lisnow, head of administration; and I on the front row. Arrayed behind us were the division chiefs, very solemn. Just as the meeting was to begin the rear door of the auditorium opened, and I could see a startled-looking pizza delivery boy with his insulated bag. Phil Durst, a young lawyer in the office, who later became my law partner, hurried over to the young man and gestured toward the stage. I knew without a moment's hesitation that the pizza was destined for me. Sure enough, down the aisle came the delivery boy, and in front of hundreds of troubled employees, he handed me the pizza. Obviously, Durst had thought to inject a little levity into this solemn occasion, probably not the best of judgments on his part. The only thing I could think to do was to open the box and take a bite. There is an unforgettable photograph of me with my pizza, Mattox with a look of extreme pain, and others not knowing whether to laugh or scream. In all events, we pulled off the meeting and survived.

Amazingly, the office functioned quite well under the cloud of the indictment, I suppose because it was widely perceived as a purely political squabble. Mattox did an effective job of getting the idea across that he was being targeted because of his attacks on big oil, and he demonized Fulbright & Jaworski and Ronnie Earle at every opportunity. If anything, the indictment made him more aggressive in his public attacks on his adversaries. If there was some thought that the indictment would corral Mattox a bit, it didn't work. The office remained as aggressive as ever.

Hurricane Alicia hit Galveston Island in 1983 and presented a major challenge to the state's concept of open beaches. The hurricane caused significant erosion of the beaches. The Texas attorney general is charged with enforcement of the open beaches law, the statute that seeks to preserve public access to all of the hundreds of miles of Texas coastlands. Former legislator and Congressman Bob Eckhardt of Houston is entitled to virtually all the credit for the existence of these protections. The public beach is defined as those lands between "the natural line of vegetation" and the Gulf waters. Alicia dramatically altered this line of vegetation, thrusting it farther away from the Gulf in many places, and leaving a number of beach houses stranded on the public easement. We faced two questions: (1) Is the public easement a rolling line that may move from time to time as a result of natural phenomena? and (2) What was to be done with the structures that were now within the public easement, that is, should the owners be allowed to rebuild? In the midst of all the furor over Mattox's pending trial, we tried and won two important cases clarifying these issues. The courts first accepted our argument that the easement did indeed move as a result of acts of nature, and the public had access up to the new vegetation line. In an effort to make some sense of the rebuilding issue, we adopted a rule that prevented rebuilding within the easement of any structures that had suffered damage greater than 50 percent. It made no sense to try to force people to tear down undamaged beach houses that were now within the public area. On the other hand, we wanted to prevent unchecked rebuilding on the public beach. The 50 percent rule seemed a fair compromise, and the Texas courts accepted this rationale over the howls of a number of beach landowners. The preservation of public access to the state's beaches has been one of the few environmental achievements in a state not otherwise given to much concern over such issues, and the Mattox record on environmental issues is first-rate.

It is amazing how unsettled the law can be on a wide variety of issues. During this time, I got a call from a political friend from Waco. He asked, "Do you remember John Trice?" "You mean 'Vodka' John Trice," I replied. It turned out that my old high school chum was starting to build a bridge across the Brazos River just above Waco. John had a sand and gravel business and had decided he could shorten his haul and make more money by building himself a new bridge across the river. I assured my worried caller that we would put a stop to such foolishness. This was one of the perks of my role: I could man the battle stations for issues that caught my fancy, and I sure as hell wasn't going to see a bridge across the river in my hometown. To my astonishment, it turned out that there was very little law on the question, and all of it was linked to historical notions of navigation. If the Brazos was a "navigable stream," whatever that meant, then private interests could not bridge it. Although the era of Brazos navigation had long since ceased, the lawyers of our Environmental Division were able to persuade a Waco jury that the river remained navigable, and the bridge building was stopped. Another victory for cronyism, I suppose, but it is mind-boggling to think that anyone can bridge a river just for their own convenience without regard to the public interest.

In truth, fascinating issues abounded in the state's lawsuits. Howard Hughes, always referred to as the "eccentric or reclusive millionaire," was born in Texas. His wealth came for the most part from Hughes Tool Co. and the oil-drilling bits for which that company held the critical patents. Hughes left

Houston at the age of eighteen years and never returned, but he always paid a Texas poll tax or registered to vote in Texas, presumably to avoid state income taxes in California or anywhere he might sit down. Hughes died in an airplane, apparently on his way back to Texas. He was in his sixties at the time and had been a recluse for many years. Stories abounded about how he lived in a Las Vegas hotel and wore Kleenex boxes on his feet to avoid contamination. John Hill was attorney general at the time of Hughes's death. In his customary aggressive fashion, Hill began a probate proceeding, claiming Hughes was a Texas resident and that Texas was entitled to assert a claim for death or inheritance taxes. Of course, the case was still going on nearly a decade later when Mattox took office. By now, it involved the states of California and Nevada, as well as Texas. The case had also become a relative judicial rarity, because it was pending on the original docket, as distinguished from the appeal docket, of the U.S. Supreme Court. When legal disputes are between the sovereign states of the union, the Constitution places such matters on the docket of the Supreme Court. That Court typically assigns the case to a special master to report back recommendations, which results in seventh heaven for lawyers' billing opportunities. California had hired some prestigious law firm for their side of the case. Mark White, during his tenure, had hired the Austin firm that was closest to him politically to handle the Texas claims. These firms were merrily billing away for endless depositions about the state of mind of Howard Hughes, who everyone knew was as crazy as a peach orchard boar. Mattox terminated the outside-counsel deal, and we proceeded to bring the matter to a successful conclusion and got a $50 million settlement. Our core argument was: once a Texan, always a Texan. After paying all the lawyers, we still made some money for the state's treasury.

The Sarita East estate in South Texas had been the subject of controversy for years. There had been not only will contests but books written about the mysterious catholic priest who had persuaded Sarita East to leave her wealth to the Catholic Church. The estate included substantial ranches as well as oil and gas holdings. The attorney general is the official charged with ensuring that the terms of a charitable trust are followed. Unfortunately, these trusts often end up being managed by trustees who don't share the goals of the deceased or who look upon the trust property as a private treasure trove. To some degree, this had been the fate of the Sarita East estate until Mattox became involved. The trust was being managed by trustees that included the lawyer for the family and relatives of the deceased. The attorney general's lawsuit alleged, although much of it was disputed, that the lawyer/trustee was also an attorney for the Alice National Bank and that the trustees placed large portions of the estate's funds in the Alice National Bank. Not only did they put the money in the bank, they placed $1,000,000 of the trust funds in an interest-free account, where those funds languished for years as free money for the Alice Bank. To compound the abuse, we alleged, the trustees leased thousands of acres of the estate lands to one of the trustees at well below market value. These practices had been going on for years when we filed suit. Despite our claim that these practices had deprived the trust of thousands of dollars, the bank and the lawyer denied any wrongdoing. The court didn't share that view, fortunately, and we got the trustees removed and the funds transferred into the hands of the church where they belonged. I suppose I tell this tale in part to highlight the number of issues that can confront the office of the attorney general and to demonstrate how important it is to have someone in that office who is vigorous

in discharging the responsibilities of the position.

The Mattox years were enormously stimulating. We hired good people and were able to lure, among many others, Scott McCown, from the UT law faculty, who labored tirelessly and effectively in bringing the *Ruiz* litigation into manageable shape; Pat Wiseman, who joined us from Houston, where he had been an outstanding civil liberties lawyer; and Renea Hicks, who came over from Advocacy Inc. and brought his broad range of talents. The office did good legal work and challenged many assumptions about the proper role of the state's attorney. Mattox was acquitted in the spring of 1985, and shortly thereafter I married Sandy Hauser. My best man at the wedding was my dear friend Dave Talbot from the AG's office. Sandy and set I about planning for a new life. I had survived many bureaucratic battles, but my time was running out. Mattox urged me to stay on, but I was ready to return to the freedom of the private law practice. Phil Durst, a young lawyer in the AG's office, joined me in setting up a two-person firm. We returned to the old Seventh Street building in November of 1985. Phil's irreverent humor and legal skills made it a joy to get back to the law practice. We took with us my secretary from the AGs office, Gwen Shaw, the most conscientious, loyal, and best-spirited employee I ever knew. In short order, we were knee-deep in controversial law-suits, as if nothing had ever changed.

Three tales will help me sign off the Mattox years. I stayed in reasonable contact with Mattox and my friends in the AG office. By late 1989, Mattox was gearing up for a run for the governorship, a victim of the never ending ambition that besets politicians. He called and wanted to have lunch. At this point, it appeared that Lieutenant Governor Bill Hobby was a likely opponent. Jim, in his inimitable style, was lambasting Hobby regularly in the press, making particular fun of Hobby's annual fox-hunting journey to Ireland. Jim wanted to know how I thought his attacks on Hobby were playing. I responded, without much forethought, that I didn't see Hobby as all that enthused about the race. I opined that if Jim didn't look out, he was going to catch either my former wife, Ann, or Henry Cisneros, then mayor of San Antonio, as an opponent and he'd wish he had Hobby back. My comment did not sit well, and that proved to be the last substantive conversation I ever had with Jim Mattox.

Bill Hobby, who had a distinguished political career, was a man of decency, a too-seldom-seen commodity in the political world. Bill was fairly conservative, which was not surprising, given his wealth and family connections. In one of life's ironies, his name is tied to a major breakthrough in Austin law enforcement. Historically, if one got popped at night for driving while intoxicated—now called DUI, or "driving under the influence"—one was destined to spend the night in jail. There was no procedure at night for securing the release of someone by posting a bond, so often we lawyers had to tell some poor soul that he or she must stay the night in the tank and we would see him or her in the morning. Bill Hobby, while he was lieutenant governor, got stopped for suspicion of drunken driving and hauled downtown. Shortly, a prominent lawyer showed up at the Austin city jail and secured the release of the lieutenant governor. The press and criminal lawyers learned of the incident, and a hue and cry was raised about favoritism. In response, the law-enforcement officials changed their policy and instituted what became known in Austin as the "Hobby Rule." The new rule enabled a DUI suspect to be released to their attorney in the evening hours and thereby avoid a night in the pokey. I have actually shown up at the city jail to secure release of some

inebriated acquaintance and been asked by the jailer if I wanted to "Hobby" out my friend. Such are life's rewards.

Years later I learned a story that I believe to be true, for I consider the source to be unimpeachable. Sometime in late 1989, before the candidate filing deadline, a well-known private investigator from Houston, Clyde Wilson, appeared in the attorney general's inner office saying that he was there on behalf of Lieutenant Governor Hobby and wanted to meet with Mattox. Mattox had been flailing away at Hobby, still thinking he was the likely opponent, and leaking to the press that he had compiled a dossier of Hobby's past misadventures. Mattox met with the investigator in the big conference room on the seventh floor. Wilson said he came as an emissary from Hobby, and he explained that Hobby had decided that he might not make the governor's race, but before he made that decision final, he wanted to be certain that Mattox had destroyed any embarrassing files that he had accumulated on Hobby. Mattox, of course, had no such files; he was a consummate bluffer. Stone-faced, Mattox called in his assistant and told him to bring him the Hobby files. Quick-thinking Steve Hall grabbed a manila folder and stuffed it with some news clips and other scraps. Steve dutifully delivered the folder to Mattox in the conference room and explained that here were the materials. The P.I. wanted to inspect the documents, but Mattox refused. It was then agreed that although he could not inspect the folder, the investigator could remain at a distance and observe Mattox destroy the contents. There was a rest room adjoining the conference room. Mattox went into the loo, leaving the door open, and ostentatiously burned the materials and flushed the meaningless documents down the toilet. Obviously, Hobby had already made up his mind not to run, and this was, if authorized by Hobby, no more than an insurance policy. That's the way the game is played at times. This little charade prepared the way for the nightmare primary of 1990 between Ann and Jim for the gubernatorial nomination and, leading up to it, surely the most miserable six months of my young life.

23
The 1990s and the Last Guffaw

AT THE OUTSET, 1990 PROMISED to be a good year. Sandy and I were thriving as new parents: Sam had been born in the summer of 1986 and was a great joy, and in December of 1989 his little sister, Hallie Austin Richards, came along, the spitting image of her beautiful mother. We were living in funky south Austin in a slightly bizarre house that had a three-story clock tower. We had a multitude of great friends—everything was coming up roses. I was involved in some fascinating lawsuits, and Rick Gray and I had just been hired by the Texas Legislative Council to advise the state in the upcoming reapportionment of the Texas congressional and legislative seats. There I sat, fat and sassy.

Bill Hobby had announced his retirement from politics, opening up the lieutenant governor's post. Ann had always given the impression that the lieutenant governor's office was her primary goal. Historically the most powerful office in the state, it seemed perfect for her consensus-building skills. I was not in Ann's political circle but assumed she would announce for that office and would be a prohibitive favorite to win. Mattox had been pounding the sidewalks for the governor's race for months, although I could not imagine anyone in their right mind giving up the AG's office for the impotency of the governorship. Hobby had declined the honor of taking on Mattox. Henry Cisneros, mayor of San Antonio, had toyed with the race but had apparently been bludgeoned out by Mattox's allusions to Henry's ill-concealed romantic entanglement. Mark White was muttering about a comeback attempt, but no one considered him a likely winner. Improbable as it once seemed, there was a possibility that Ann and Mattox might be the Democratic nominees for the state's two top offices.

Then it hit. Ann announced for governor. I had been forewarned by an early call that it was coming. The news had sent me into a total funk. Unfortunately, I could see most of the script, and it was dismal. Everything was wrong about such a race, especially for me. From a purely selfish standpoint, it meant that I was going to be torn between family and friends. Long-standing and close friends from the AG years were going to be in the Mattox camp. My grown kids would be knee-deep in Ann's race, and I knew that I would end up wherever my children were. I didn't relish any of this, but there were plenty of other unpleasant prospects.

For thirty years or so, many had devoted untold energies to nurturing a progressive coalition within the Democratic primary. We had seen in 1982 and again in 1986 that we could produce winners for the first time in our political lives. Those victories depended on holding together a bloc of union labor, Blacks, Hispanics, activist women, and the old liberal/populist strain. It was painfully apparent that a primary contest between Ann and Mattox would be devastating to this coalition, for they both drew their support from these sources.

Finally, I knew that Mattox would stay true to form and run his typical junk-yard-dog campaign. This forebode a reopening of all the issues and rumors surrounding Ann's alcoholism. The prospects were awful, for such a race

would be extremely painful for the children and for Ann—and for all concerned.

The primary race proved infinitely worse than anyone expected, and it all seemed so unnecessary. Ann and Jim sprang from the same political roots. I had known them both from their political infancy in Dallas in the early sixties. They were both protégés of three major players in Dallas liberal Democratic politics: my old law partner Oscar Mauzy and the political activists Mike McKool and Dan Weiser. It was as if Ann and Jim had begun their political careers in the same living room. But as we have had to learn from time to time, just because people begin with common goals and ideals does not ensure they will stay linked. Ambitions and jealousies take a fearful toll on goodwill in the political arena. Nonetheless, if one could be detached, the irony was pretty overwhelming. Texas liberals had been fighting for decades to get a foot in the door, had finally done so, and now they were getting ready to amputate their own leg in an internecine battle.

My initial vow was to stay out of the race altogether. Sandy and I decided to make a decent-sized financial contribution to Ann's campaign and then try to keep a distance from the battle. This resolve was short-lived. Sandy and I attended Ann's announcement on the capitol lawn at the urging of one of my kids. There, sitting on the grandstand behind Ann, were my four children and my ninety-year-old mother. Obviously, staying aloof was going to be nigh on impossible. Then, in fairly short order, Mattox began his personal attacks on Ann: alcoholism, drug use, and virtually anything else that came to his mind. This set the tone for what seemed an interminable primary campaign, and I became increasingly outraged and engaged.

The first big battle erupted over the AFL-CIO endorsement. Mattox had assiduously courted the union leadership for years. It was widely assumed that if Ann could block a labor endorsement for Mattox, then her candidacy would take on instant credibility. AFL-CIO unions endorse through an arm known as COPE, the Committee on Political Education, a separate but essentially mirror image of the parent organization, COPE endorsements require a super majority, two-thirds of the delegates. It seemed possible that Ann might be able to prevent Mattox from getting the necessary margin. The COPE convention was in Austin that year, and Ann's campaign headquarters, mindful that many of these delegates were long-standing clients and friends of mine, called and asked me to come lend support to Ann's effort. Suddenly, there I was going hairy eyeball to eyeball with old comrades in the Mattox operation. Two of my best friends in the labor movement, James Foreman from Dallas and Max Ladusch of Austin—both electrical workers (IBEW)—were in opposite camps: James for Mattox and Max for Ann. And I was caught right in the middle. This sort of conflict between old friends and allies was rife everywhere on the floor of the union convention, and it was symptomatic of what was occurring throughout the progressive movement of Texas. I don't know whether my presence helped or hurt Ann, but she managed to block an endorsement for Mattox, and her campaign was off and running.

Mark White got in the race, but his wad had been shot long before. Even so, his presence did manage to force a runoff between Ann and Mattox. Foolishly, I had hoped that Mattox would moderate his campaign in the runoff—I know he received frequent advice along those lines—but, if anything, his attacks on Ann worsened; each day brought some new salvo. Ann's public career was unblemished, so Mattox focused his attacks on unsubstantiated rumors of drug

use. Ann had long ago acknowledged her alcoholism, her subsequent treatment, and her current Alcoholics Anonymous membership, so no mileage was to be gained by rehashing that issue. The press corps loved Ann, and largely deplored Mattox and his style. Many members of the press were old friends from canoe trips and campouts. If any of them had ever observed any conduct that would have lent credence to Mattox's charges, they held their tongue. These were different times, and the press still respected matters of personal privacy.

Ann ran a disciplined and focused campaign. To her enduring credit, she maintained her poise throughout the daily assaults and never responded in kind. Ann gave Mattox a good thrashing. She polled strongly in all segments of the old coalition and had the added advantage that the Bentsen/Hobby wing of the party abhorred Mattox. By the time of the actual election, I had become so sickened by the campaign and by Mattox's excesses that I could not watch the news or read press accounts of the campaign. It was so unnecessary and so destructive. Ultimately, Mattox hurt himself with the electorate, but unfortunately he managed to leave Ann permanently scarred.

Clayton Williams, a wealthy West Texas oil man, had won the Republican primary against better-known opponents. He had been untouched in the process, largely due to the Republican code of never speaking ill of another Republican. With his folksy ways and great wealth, he was quickly seen as the favorite for November, and that is exactly how the race proceeded. Ann was still limping from the primary and did not seem able to get any kind of handhold on Williams. The Williams campaign stayed on the high ground and avoided all of the charges that Mattox had pummeled Ann with. Of course, they didn't need to trot them out, given the decibel level of the primary.

Fortunately for Ann, and probably for the state, hubris and inexperience got the best of Claytie. I could never forgive him for sinking deep irrigation wells around Fort Stockton, Texas, and drying up the historic Comanche Springs, but most Texans didn't know or care about such matters. They do, however, seem to worry about image. In an unguarded moment, Williams alluded to the practice of West Texas young men scooting into Mexico to get "serviced" in the bordellos across the border. This remark, albeit entirely accurate, caused consternation in some Republican nice-lady circles. Another misstep followed shortly. After Ann made public her income tax returns, the press asked if Williams would follow suit. Without thinking, Williams replied that he hadn't paid any taxes the previous year. Even for a state that adores wealth, this seemed a bit much.

Williams's grand parade to the governor's mansion began to falter. As a final straw, during a televised debate, Ann caught him off guard when she sought to shake his hand. His apparent refusal of her proffered hand made him look to be without much class, probably a fair assessment. These incidents sufficed to dampen Williams's appeal in urban circles and enabled Ann to win a narrow come-from-behind victory. Without detracting from Ann's courageous race, her victory was probably an anomaly in conservative Texas. The Bush people four years later obviously saw it that way. They crafted a campaign free of Williams-type fuckups and Mattox-class character attacks. Ann was not able to hold the urban Anglo women against Bush, and although Bush made no inroads among minority voters, the loss of the nice-lady crowd doomed Ann's reelection. By all accounts, Ann's polling throughout that race reflected one constant: the voters in large numbers liked Ann, but the Anglo community

didn't like her liberal politics.

It is impossible to know whether the primary race between Ann and Mattox did permanent damage to an emerging liberal coalition in Texas. It certainly didn't help, and liberals have been little in evidence in Texas politics since 1990. Maybe they got old and exhausted. Perhaps the coalition was overwhelmed by new arrivals from elsewhere who came to populate Texas's high-tech industry and brought with them their suburban Republican leanings.

In all events, 1990 was the last hurrah of the old Yarborough Democrats. The 1990 general election not only put Ann in the governor's mansion, it elevated Bob Bullock from the comptroller's office to the lieutenant governor's post. The Democrats held on to all the state's top offices, with the exception of agriculture commissioner, where Rick Perry knocked off Jim Hightower in a squeaker. A newcomer, Dan Morales, succeeded Mattox as attorney general to become the first Hispanic to hold high statewide office. Morales had been a Democratic legislator from San Antonio, and everyone in our crowd applauded his arrival—which turned out to be a drastic mistake, as he proved totally unfit for the job. Morales seemed to be unburdened by any understanding of the role of the state's lawyer, as was most dramatically demonstrated at the end of his career by his transparent attempt to cut some old buddy in on the proceeds of the settlement of the tobacco litigation.

With the elections behind us, I quickly found myself caught up in the reapportionment that followed the 1990 census. For those in and around politics, the decennial census is a time of absolute frenzy. So much seems to be at stake. Every Texas house and senate seat must be redrawn, as well as the congressional districts. This was to be my third round. In the 1970s, I had been a total outsider, suing the state at every opportunity and having a major role in the reconfiguration of the Texas house into single-member districts. In the 1980s, I worked on all sides. I began by successfully suing the state in several cases concerning that year's realignment and ended up in Mattox's AG office representing the state in the winding down of that decade's redistricting issues.

In 1990, I was slated to be on the inside from the outset. I suspected that this would entail some political compromises that I would not have tolerated in my youth, but, as always, I wanted to be where the action was. Rick Gray and I had a contract with the Texas Legislative Council to advise on the development of all redistricting plans and to assist in court or elsewhere in the defense of the product. Rick, who had his own firm, had been Mark White's principal assistant during White's tenure as attorney general. A superb lawyer, Rick had ties with the establishment that were well beyond my reach. We seemed a perfect combination and looked forward to an exciting few years of battle.

At one level, redistricting is a simple mathematic exercise. You take the state's population, 15 million let's say, and divide by the number of Texas house seats—150—and arrive at the "ideal" size of a district. The process is repeated for the 31-member senate and for the congressional seats, which now number 33. At the national level, a somewhat similar process is followed in connection with the allocation of congressional seats among the states. The nation's population is divided by 435, the number of congressional seats, and each state is allocated the number to which its population entitles it. In some states the population is so small that, under a strict formula, the state would be entitled to no members of Congress, but the Constitution guarantees at least one member. The states themselves are responsible for the actual division of the congressional seats assigned. The principle of one person, one vote ensures

that the seats that are drawn adhere reasonably to the "ideal" size produced by the mathematics. As a historical note, for a century or more there was no constitutional protection of the right to vote in fairly apportioned districts. The Warren Supreme Court in the 1960s for the first time engrafted on our constitutional notions the ideal of numerically equal districts. Until then, politicians typically ignored the obligation to redistrict, because the courts would not intervene. It was always rumored that Sam Rayburn's congressional seat around Bonham, Texas, was the smallest in the country—a nice comfy district created to take care of Mr. Sam.

Once you complete the numerical game, then the fun starts. Where do you draw the district line? Who is protected and who is thrown to the wolves? Elbridge Gerry signed the Declaration of Independence and was a prominent figure in revolutionary times. He went on to become governor of Massachusetts, where he drew the first of many elongated "salamander" districts that always characterize political line drawing. To him we owe the term "gerrymandering" as well as the concept of imaginative line drawing.

Texas, as do most jurisdictions, commits the responsibility for redistricting to the elected officials, in this instance the legislature. This obviously means that the overwhelming premise is protection of incumbents. This is not always easy to accomplish in places as large as Texas, with its dramatic population growth. Each decade, rural areas decline in their portion of the population while the suburban counties around the major cities explode with new housing developments. The resulting shift of seats produces ample opportunity for partisan interests to play with configurations that will enhance their strength. The crudest and most effective scheme is to pack your opponents into a district. For example, one can create a district in Dallas that is 90 percent Republican—not too difficult to achieve—and then structure an adjoining district that has a 45–55 percent Democratic profile. When voters are puzzled about voting districts that seem to defy logic, the answer is normally found in some political consideration known only to the insiders. In Austin, one of the recurring battles was where to fix the line in east Austin between the Black and Hispanic communities. The Black community wanted it fixed on east Sixth so that all of Seventh Street would be in the Black district, arguing that this was the historic dividing line between the two communities. Unfortunately, Richard Moya's mother-in-law lived on the south side of Seventh, and he always insisted that her residence be in the Hispanic district. So it was that in those years we always ended up drawing the boundary down the middle of Seventh so that the south side of the street would be in the Hispanic district. This kind of consideration animates redistricting decisions throughout the process, and computer technology makes it all very simple.

For the 1990 redistricting, the Legislative Council established a massive computer program that was available to every officeholder in the state. The program enabled a player to draw districts on a grid by city block and obtain a printout of every aspect of the district created. Racial and ethnic breakdowns, wealth data, and, most important, voting profiles were all available in the secrecy of your computer cell. One could determine how any proposed district had voted in an entire array of previous elections. This information enabled political junkies to have a field day constructing potential districts designed to accomplish their particular political ends. Rick and I were not part of this process, as neither of us had the skill or the inclination. On the other hand, not long after the redistricting process got under way we were up to our asses in

alligators.

It seemed as if all the chickens came home to roost at one time. First crack out of the box, Bullock got into a cussing match with Morales over my role in the process. Morales insisted that his office was in charge; Bullock demanded that I be the person taking care of his business. This was all very flattering, but it resulted in an ongoing battle with the AG's office at a time when we had ample enemies on the outside.

The first of our problems was the Justice Department, as all plans had to pass its scrutiny. During the Reagan/Bush years, the Justice Department played politics with a vengeance. At the top, they understood full well that one way to destroy the Democratic Party of the South was to have it be perceived as the party of minorities. This was essentially an extension of Nixon's southern strategy. It was simple to achieve this goal by forcing the southern states, under cover of the Voting Rights Act, to maximize minority electoral districts at every opportunity. The strategy produced a three-pronged result. It tended to eliminate white liberal Democrats who had depended on minority support; it created conflicts within the party, as white liberals and minorities were forced to battle over line drawing; and, finally, the resulting districts began to foster an image among white southerners that the party had been taken away from them. None of these are necessarily bad, but the benefit to Republican strategists was obvious.

In an earlier chapter, I described Governor Clements's unsuccessful efforts in 1981 to destroy two white liberal Dallas congressmen, Jim Mattox and Martin Frost, through the transparent guise of insisting upon a so-called Black congressional seat in Dallas. By 1990, the Bush Justice Department had resorted to the same tactic, insisting at every level that proposed redistricting plans would not be approved unless the plans maximized minority strength. This resulted in the drawing of some districts that truly offended the eye—districts that were later voided by the U.S. Supreme Court as unconstitutional racial gerrymanders. The truth is, although stoutly denied at official levels, it was the Justice Department's insistence that created these monstrosities all across the South and at all levels of government.

The Texas legislature had done a pretty decent job of redistricting and had, at least to my mind, discharged its duties under the Voting Rights Act. The Bush Justice Department seemed determined to pursue its—later repudiated—insistence on maximizing minority districts at every opportunity. While we were trying to make peace with the Justice Department and secure approval of the state's redistricting efforts, my old friend George Korbel and his allies sued state officials in state court in Hidalgo County, where they had managed to find an extremely friendly judge. They claimed under the Texas Constitution that all of the state's plans should be voided because of defects in the census. Their claim was that the Census Bureau had undercounted Hispanics and, as a result, the state's redistricting plans were discriminatory. They argued that we should develop new data that accurately reflected the true Hispanic population and redistrict on that basis. As improbable as it might seem, they had found a judge who was prepared to order us to do precisely that. While attempting to puzzle our way through that particular conundrum, the Republicans sued the state in federal court in Austin, where they too found a sympathetic ear in the person of Judge James Nowlin. The Republicans challenged the redistricting plans based on a variety of theories under federal law, their main hope being that they could persuade the federal court to adopt their own redistricting plan for the state.

Caught between these fires, Rick and I scrambled for weeks in various courthouses with no success. We finally found ourselves trapped in federal court in Austin before a three-judge panel—including Judge Nowlin—that seemed highly skeptical of the state's efforts. I suppose, given all my own forum shopping over the years, I richly deserved the experience of a hostile court, but that didn't make it any more fun. Under Judge Nowlin's leadership, it was all too apparent that the court intended to significantly redraw the Texas legislative districts.

Just when things looked their bleakest, I got a call at home from a young man who worked in the computer operations of the Texas Legislative Council. He reported that Judge Nowlin's law clerks had been working on the state's redistricting computer together with a Republican member of the legislature from San Antonio, George Pierce. To me, this was dynamite and might provide the way out of our judicial trap. A contentious matter was currently under submission to Judge Nowlin. As I saw it, here were his law clerks working secretly with the Republican opposition, a breach of judicial ethics to my mind. I met with Bullock very early the next day, and, naturally, he wanted to see the issue vigorously pushed, including a motion to recuse Judge Nowlin.

Everyone learned a great deal about modern technology during the course of the investigation of the allegations concerning Judge Nowlin's law clerks. First, we discovered that it was possible to reconstruct from the computer hard drive every move and calculation that had been undertaken by the law clerks and the legislator. So much for the Delete button . . . It was obvious that the clerks and the legislator were trying to draw a friendly district in San Antonio for Representative Pierce so that he could run for the Texas senate. A later report by the Texas attorney general found, among other things, that "the significance of the changes made by Rep. Pierce and Mr. Munn [Judge Nowlin's law clerk] can hardly be overstated. In less than an hour, Rep. Pierce carved out two potential opponents—Cindy Krier and Jeff Wentworth—from the senate district (26) in which Rep. Pierce planned to run for the senate." Second, we learned that the state maintained a register of each phone call made from all state telephones. This was news to almost everyone. A check of that record revealed frequent calls from Representative Pierce to Judge Nowlin's chambers and to his home phone. With this evidence in hand, it seemed crucial that the state file a motion to recuse Judge Nowlin from the case before the court could issue any opinion redrawing the state's legislative districts. For some reason, though, Attorney General Morales was unwilling to act. I thought his inaction was intolerable and made no bones about it. I told Bullock of my views, and the shit hit the fan again between Bullock and Morales, only this time I didn't survive.

The next day Morales announced in a press conference that I was fired from the redistricting case and his office didn't need me anymore. Unfortunately, I took Rick out with me, although the blame, if there was blame, was all mine. Morales continued to pussyfoot about the Nowlin matter, and the court shortly issued its order redrawing house and senate districts. Ultimately, a third party took the evidence that had been accumulated and filed a citizen's complaint about Judge Nowlin's conduct with the Fifth Circuit. It became something of a public brouhaha, with wide press coverage of the contacts between the legislator and the law clerks. In due time, the Fifth Circuit conducted an investigation and mildly chastised Judge Nowlin. The end result was finally achieved: Judge Nowlin stepped out of the redistricting case, but I was long

gone by then. The turmoil was probably worth it, but in the process, I had angered old friends from the AG's office and burned some bridges.

The primary elections of 1990, and the misery accompanying them, convinced Sandy and me that we were not going to go through another election cycle in Texas. It wasn't worth it. Now that I was at war with the attorney general's office, we had yet another reason to move on. We hit upon Santa Fe as a spot from which we might be able to view Texas a little more objectively and a little less painfully.

I look back on the Texas years with much fondness and few regrets. You have to call 'em as you see 'em, and that's what I did. But now, Bullock is in his grave, Ann is lobbying in Washington, Mattox has failed in a comeback for attorney general, fire ants and developers have taken over the farm on the San Gabriel River, and Republicans abound. I am reminded of the lament of the old-timer in Guy Clark's *Desperadoes Waiting for a Train:* "Oh, Lord, has every well I drilled gone dry?"

But the short answer to that lament is "Quit your whining, you had it really good." Not every well has gone dry; in fact, the springs have burbled over these last forty-five years. When I came of age in 1954, Blacks, Hispanics, women, and, for that matter, Republicans were essentially nonexistent in the political life of the state. Rigid racial segregation dominated every aspect of day-to-day life, and the plight of Mexican Americans was not much better, as economic peonage was the rule of the day in South Texas. Today's landscape is utterly different. Nowhere are the changes more evident than in the political life of the state. In the twentieth century, no Black Americans were nominated for any office in the state by either the Democrats or the Republicans until 1966. Today there are Black mayors of the state's two largest cities, Dallas and Houston. Black officeholders are now found—and have been for a number of years—at all levels of Texas government and in every nook and cranny of the state.

Since the election of Henry B. Gonzalez to the Texas senate in 1956, Mexican Americans have been on a steady course toward establishing themselves as true political players in the state. In 1963, when Mexican Americans won the majority of the city council seats in Crystal City, Texas, it was as if the earth moved everywhere south of San Antonio. Revolution was at hand, and the Texas Rangers were deployed to ensure that it did not spread. Today it is safe to say that in every South Texas county with a majority Hispanic population, Hispanic officeholders dominate. There are even, I am told, Black and Mexican American officers in the Texas Rangers. This is indeed a different Texas.

When I was a teenager, my mother was state president of the League of Women Voters. One of their principal goals was to achieve some form of equality for women in Texas. As late as the 1950s, women were barred from serving on juries in Texas, and married women could not transact business in the state without going to court to get their "disabilities" removed. My mother and her allies successfully lobbied for changes in most of these restrictions. In 1972 the Texas Constitution was amended to include a provision that "equality under the law shall not be denied or abridged because of sex." Thus Texas has its own Equal Rights Amendment, an achievement not yet attained at the national level. The senate resolution sponsoring the Texas ERA was authored by none other than my old comrade in arms Oscar Mauzy. Needless to say, the number of elected women in Texas was negligible in the 1950s, but they are

everywhere today, and the state is certainly better off for it.

The economic bourbons still run the state, though now as Republicans rather than as Democrats, but they have been forced to set a few more places at the head table and tolerate a little more democracy. An ironic anecdote might serve to illuminate the changes in our society, in both directions. In 1951, the U.S. Supreme Court in *Sweatt v. Painter* held that the exclusion of Blacks from the University of Texas Law School violated the Fourteenth Amendment of the U.S. Constitution. The Texas legislature responded by creating Texas Southern University Law School, in the forlorn hope of keeping Blacks out of the UT Law School. Forty years later, the U.S. Court of Appeals for the Fifth Circuit held that the UT Law School was acting in violation of the Fourteenth Amendment by maintaining an affirmative action program designed to increase Black and Hispanic enrollment. If you stay around long enough, everything rolls back by.

24
The Trail Doubles Back

LIFE CAN TAKE FUNNY TURNS. When we read Charles Dickens or William Thackeray in our youth, or for that matter Larry McMurtry in our maturity, it seemed so improbable that characters who wandered off down the road were always reappearing. Now in old age it makes perfect sense; people do loop back and forth through our lives. Perhaps there is some higher purpose, a chance to atone, a chance to renew, or just a reminder of the magic of life.

John Henry Faulk's wife, Lizzie, called to say that if I wanted to see John Henry before he died, I better get out there pretty soon. Johnny was one of our authentic heroes. He fought the good fight all his years, and did so with courage and wit. As most know, he began with a love of folklore, became a champion of minority rights, and ended up in New York as a radio celebrity in the late 1940s. He was one of the more notable victims of the red-baiting of the McCarthy era. Driven from CBS by right-wing hysteria, he ended up back in Austin with not much more than the proverbial pot to piss in. Thanks to Cactus Pryor and other old friends, he restitched his life and became, among other things, an eloquent champion of free speech. All of us who shared in his warmth consider ourselves thrice blessed. Now the main library in Austin is named in his honor, a most fitting acknowledgment of his contributions to freedom of expression, and one more indication of the change in Austin politics.

I called Maury Maverick Jr. and told him to come on up from San Antonio to go see Johnny with me in Austin. We found him on his last legs; Maury held his hand for a while and then stepped aside. Johnny wanted to talk, and I recalled that Rambling Jack Elliott was playing his music in Austin that night. I told him that Sandy and I were going to hear his old buddy Rambling Jack. He was silent for the longest time—I thought he might have forgotten who Jack was.

Then Johnny sort of reared himself up and said: "Rambling Jack. His real name was Elliot Adnopoz; his daddy was a doctor in New York. Jack and Woody Guthrie used to come around my place in New York. The trouble with them was, you couldn't get 'em to be serious about their music. All they wanted to do was hang out and party." He drew a long breath, then went on, "Jack showed up down here a few years back and stayed with me and Lizzie. He had some young woman with him, said it was true love, most disgusting thing I ever heard." After a moment he added: "You tell Jack if he wants to see me before I die, he'd better hurry up." Exhausted by this exchange, Johnny seemed to doze off; it was the last time I saw him.

I had seen Rambling Jack off and on over the years. He is truly one of the last of the troubadours. You never know with entertainers whether they remember you or not, so I wasn't sure if I would even try to tell him about Johnny. The music was at the Cactus Cafe on the UT campus. Sandy and I were sitting against the wall before Jack's show, and he came and sat down beside me. I realized then that he is one of those special types who remembers almost everyone. I reintroduced myself, bought him a tequila, and told of my

afternoon with Johnny. His response was instantaneous: “I was a little boy growing up in New York City, and my daddy was a doctor. I would go with him some mornings on his house calls and listen to this fellow on the radio named John Henry Faulk. He told country stories and played folk and country music. I told myself right then that I was going to try to be a part of that world.” He went on to explain that he had run away from home as a youngster and sort of followed Woody Guthrie around the country for some years. When in New York, they hung around John Henry’s apartment, where he first met Leadbelly, among other music figures of the day. Jack played his set, but Sandy and I didn’t see him after the show.

I didn’t see Jack again until six months later when my old comrade Wayne Oakes was dying of cancer. Wayne had been an early civil rights activist; he had been arrested and thrown in jail in Huntsville, Texas, during one of the first lunch-counter sit-ins in the state. Later he had served as executive director of the Texas Civil Liberties Union, but, mainly, Wayne and I were old camping and river-running buddies. I had been the best man at Wayne and Lynn’s wedding, and Lynn had now invited us to a backyard birthday party for Wayne. We were sitting around the yard in a very quiet mood. Wayne had gotten out his guitar but was too weak to do much with it. Up strolled Rambling Jack, pushing Buck Ramsey in his wheelchair. Jack and Buck had been playing at cowboy poetry events across the country and had decided to check in on Wayne. Buck and Wayne were old musical friends, and Buck had played and sung at Wayne’s weddings. Buck showing up was understandable, but Jack, who at last report was living in California, came out of the blue. Jack told me had gotten to see John Henry before he died, and at that moment the circle seemed so tight and our linkages so strong.

Wayne tried to sing a little, and Buck gave us his classic rendition of “Roundup in the Spring,” a song with the refrain, “I want to be in Texas for the roundup in the spring.” We all realized that there weren’t going to be many more springs for Wayne, and it got pretty solemn. Then Jack got his guitar, and it was immediately clear why he has had such a following for so many years. Somewhere along the line he had gotten serious about his music and shed any lackadaisical attitude that John Henry had remarked on. I realized that entertainers are just that—when they start their gig, whatever the surroundings, they are deadly serious about their art. If you have never heard Rambling Jack do “Diamond Joe,” put it on a list of must-do experiences. My last memory of Wayne is hearing his reedy twang joining Rambling Jack’s raspy voice in a rendition of “I Ride an Old Paint.” The music helped us make it through the afternoon. Wayne went into the hospital shortly for further treatment, and we never saw him again.

In their own different ways, John Henry Faulk and Wayne Oakes were utterly authentic. If Rambling Jack had set out to discover the world of the West, its music and its stories, he damn sure found it in John Henry and Wayne. Their manners, their language, and their sometimes erratic behavior made them unmistakable Texans. These were not the homogenized versions of Texans that now show up in their boots and jeans, but real honest-to-God natives of their soil who didn’t care one whit if their ideas offended the gentry. Johnny told his tales and Wayne sang his old songs, and we would all get sentimental about our roots and despair about the new order of things. That’s the way it was and will never be again. Somehow, Rambling Jack’s appearance on these occasions helped me make some sense out of the sad occasions of the

passages of John Henry and Wayne.

Though sometimes the looping back is sentimental and sad, on other occasions it can truly reinforce your early sense of value. Much of my political life in Texas was tied to two major figures in the progressive movement, Ralph Yarborough and Oscar Mauzy. If you have read the earlier pages, you know that Senator Yarborough was the godfather of the Texas liberal movement that emerged after World War II. Yarborough's unsuccessful races for governor in the 1950s forged a coalition that battled the conservative establishment tooth and nail for years. Yarborough's two terms in the U.S. Senate, beginning in 1957, were a testament to his progressive ideals. He was a fierce champion of the underdog who made all the good fights, including opposing Nixon's nominations of Carswell and Haynesworth to the U.S. Supreme Court. His votes as the lone southerner *against* those nominations laid the groundwork for his 1970 defeat in the Democratic primary at the hands of Lloyd Bentsen. Bentsen ran a perfectly scurrilous campaign that linked Yarborough with race mixing and the anti-Christ. In some ways, Yarborough never recovered from that defeat. He made an ill-advised senate race two years later, losing to Barefoot Sanders in the Democratic primary, and finally hung up his sword. Unlike many elected officials, he had not profited one whit by his political successes, and in his later years, he was still out there practicing law in order to make a living.

I practiced law with Oscar Mauzy for a dozen years in Dallas and was introduced by him to political reality. After I left Dallas, Oscar and I had remained allied in labor/liberal politics and a wide range of voting rights lawsuits. Oscar had been one of my favorite expert witnesses; his encyclopedic knowledge of Texas politics and his combative nature made him ideal in the rough-and-tumble of the courtroom. Later, Oscar stood aside from his Oak Cliff senate seat when it was clearly time for that seat to be filled by a Black American, and, remarkably, he went on to win a seat on the Texas Supreme Court.

Two lawsuits in my late career gave me a chance to relink with both of these figures from my youth and to reaffirm for me their great spirit. Thanks to old friends from the Mattox era, I was hired to represent Garry Mauro and the Texas General Land Office in an intriguing oil-and-gas lawsuit. The case had its origins in the early 1930s and concerned the huge oil strikes in the Yates field of West Texas. We claimed that Texas had been finagled out of its royalty interests through a scheme that involved one of the state's most powerful law firms, the Cantey & Hanger firm of Fort Worth, and Fred Turner, from one of Midland's big-time oil fortunes. By the time the state's claim was made, most of the original players were in their graves and the royalty interests had passed into family trusts and similar tax-saving arrangements. Nonetheless, the stakes were immense. The oil well at issue had been one of the largest in the Western world, and the royalties had reached hundreds of millions of dollars. The statute of limitations does not run against the state when its lands and minerals have been fraudulently taken, and as a result, the entire kit and caboodle was in play. Some of the defendants had sufficient wealth to actually come close to paying such a claim. When suit was filed, the cries of anger and anguish reverberated in the country clubs of Midland.

Unbelievably, Ralph Yarborough, at eighty-seven years of age, proved to be a most important witness for the state. As a young lawyer, he had worked in the attorney general's office under Jimmy Allred as the principal adviser to the

attorney general and the land commissioner on all matters related to the state's mineral interests. His knowledge of oil-and-gas law and the history of the industry was encyclopedic. Yarborough had been the attorney for the state in 1930 in an early lawsuit that formed the backdrop for our current matter, arising sixty years later.

Among other things, Yarborough's testimony illuminated two important but little-known features of Texas oil-and-gas law, both of which were central to our case. Great fortunes were made in the West Texas oil fields by people known as vacancy hunters. When Texas came into the union in 1845, it retained its public lands—more than 200 million acres. Much of this land was in West Texas, which at the time was unpopulated and still the home of the nomadic and fearsome Comanche, among other Native American tribes. Surveying this area was not an attractive prospect. Senator Yarborough testified that no one much wanted to venture out west of the Pecos where the Indians referred to the surveyor's transit as the "thing that steals our lands."

Consequently, many of these lands were the subject of what was known as "office surveys," someone sitting at a desk in Austin drawing lines that formed the basis of land grants by the state. Another practice, described by Yarborough, was the horseman-cigarette method. A rider would roll a cigarette, start riding, and then, when the smoke was finished, estimate the distance he had traveled. Successive smokes produced the survey. Obviously, such haphazard methods produced erratic property lines and large gaps of unsurveyed lands. These gaps were known as vacancies, and the "vacant" land could be claimed by anyone who discovered the surveying error. It has been estimated that in the early 1900s as much as 5 percent of the land in Texas was vacant.

No one much cared about these matters until the huge oil strikes in West Texas were made. Suddenly, land valued at less than a dollar an acre assumed enormous potential, and the vacancy hunters arrived soon thereafter. One of the most successful of these was Fred Turner of Midland. Under Texas law in the 1920s, there was no such thing as compulsory pooling in the oil fields. If you owned a one-acre tract in the midst of thousands of acres, you were entitled to drill a well on that acre and enjoy the full production from the well. Turner discovered, claimed, and was awarded a 2.5-acre vacancy adjoining a major producing well owned by Humble. Turner's only problem was that all he had acquired was the surface of the land, which was worthless because this tract fell within minerally classified land for which Texas owned the subsurface minerals.

This predicament for Turner triggered the second feature of Texas oil-and-gas law: the Relinquishment Act. All through the early part of the twentieth century the Texas legislature strove to give away the state's minerals to the owners of the surface of the land. Yarborough's testimony explained the root of the controversy: "The State owned all of the minerals and the rancher or farmer owns the surface . . . the oil man came in and got a permit from the Land Office and this authorized him to go and drill that land. . . . The farmer or rancher did not get any of the royalties from the oil production and was paid only 10 cents an acre for damage to the surface." Yarborough went on, "Once they reached West Texas, where most of the land was, it raised violent conflicts. And the ranchers were threatening to kill those that came on the ranches."

Beginning in 1919, the legislature, trying to solve the conflict, began to pass laws giving the state's mineral interests to the surface owner. To its credit, the Texas Supreme Court struck down these attempts as unconstitutional donations of the state's property. After a decade or so of litigation and legislation, the final legislative effort was interpreted by that court to be intended to make the landowner the agent for the state in leasing the mineral interests for development, with the state and landowner sharing equally in any royalties received.

This development in the law placed Turner and his newly discovered vacancy in a predicament. Drilling on his land was almost certain to result in a major producing well, given the proximity of production on adjacent land. Yet the minerals belonged to the state, and he could not drill the well without sharing with the state everything received. If he followed the law, Turner's only option, as the surface owner, was to lease the land for drilling to an outside entity. The standard lease of that era reserved a one-eighth royalty to the landowner and gave the balance to the developer. This meant that Turner and the state would end up with a paltry one-sixteenth each, small reward for Turner's ingenuity. Years later, as we delved into ancient documents, it seemed obvious that Turner had found a way to keep the lion's share for himself. Turner made a lease with an old business partner, deeding his buddy the seven-eighths working interest and reserving to himself and the state a one-eighth royalty. The well was drilled in 1933, and it became the largest producer in the field, yielding thousands of barrels per day.

After the dust settled, the seven-eighths working interest moved through a corporate shell or two, and in 1937 ended up in the hands of Turner and his Fort Worth lawyers. For fifty years this stratagem remained concealed. The state of Texas was receiving only a one-sixteenth royalty, while Turner and his cohorts had the balance. Under the law, of course, Turner was obligated to share with the state all of his royalties from the well. A disgruntled former bookkeeper of Turner's alerted the state to the fraudulent scheme, and Garry Mauro, as land commissioner, brought suit against the Turner heirs to recover the state's interest. When suit was filed a half-century after the events, lo and behold Ralph Yarborough, well into his eighties, was raring to go.

I had been somewhat soured by my earlier experience with Yarborough while he was in the U.S. Senate. As you may recall, I was due to go to work for him in 1967 as counsel to the Senate Labor Committee, but I panicked and jumped ship when I was exposed to his paranoia about the Johnson White House. Those old doubts vanished as I had the chance to work with him again in a field he knew so well. His sympathy for the underdog and antipathy toward the fat cats was undiminished. These traits, coupled with his knowledge of history and legal scholarship, made him a most formidable witness.

After suit was filed against the heirs of Fred Turner and the Cantey & Hanger partners, Yarborough spent the better part of three days on the witness stand, most of it under able and stiff cross-examination. For those who have not had the pleasure, testifying under such conditions is a grueling experience, even for a young person. But the senator was unfazed and gave as good as he got, if not better. The crux of his testimony concerned 1934 litigation in which Yarborough represented the state, while the Cantey & Hanger firm, through Johnson and McMahon, represented Turner. The defendants argued that this earlier *Reid* litigation had effectively approved Turner's acquisition of the sizable royalty interest. Yarborough had already testified that Johnson and

McMahon had tried to pressure Attorney General Allred into firing him, because he was too aggressive in pursuing the oil industry. The following colloquy during Yarborough's second day of testimony demonstrates just how tough he was:

> Q: . . . Even though you and Gillis Johnson and Mark McMahon might have differed politically, you will recognize, will you not, that they were men of integrity, they were honest, they were patriotic . . . ?
>
> A: . . . I never questioned their patriotism, their ability as lawyers . . .
>
> Q: You didn't question their honesty, did you?
>
> A: Not generally, general honesty. I trusted them in this case. I didn't dream when that judgment was being entered back there in '34 that this was an underhanded deal, that Turner . . . was going to get back a big part of that and pocket it all when the State would have been entitled to half of that.

In skills courses, lawyers are cautioned about going fishing on cross-examination, the risk being that a smart adversarial witness will simply gouge you again. Here we have Ralph Yarborough, tough as a boot, happily harpooning his tormentor by this testimony. It was great fun and a special honor to have this last run with this grand man. His health deteriorated shortly after the first trial, but he did live enough years to enjoy the report of our victory before the Texas Supreme Court. That court, in a five-to-four opinion authored by Justice Raul González, ruled for the state, holding that "if the Turner-Fasken lease was intended as a vehicle to give Turner additional consideration . . . then he breached his duty to obtain fair compensation for the State" (*State v. Durham*, 860 s.w. 2d 63, 1993). The court's opinion took specific note of the "testimony of Senator Ralph Yarborough, who was the lawyer representing the State in the *Reid* litigation, that he would not have agreed to the 1934 judgment if he had known of the preconceived plan." This decision meant that the state was to recover millions of dollars for the Permanent School Fund and the school-children of Texas. Nothing could have given the senator more pleasure. Ralph Yarborough was a champion of my youth, and my last encounter with him convinced me that my trust in him was never misplaced.

Although Oscar Mauzy was no longer on the Texas Supreme Court when the *Durham* case was decided, he was there earlier and got to author one of the preeminent cases of Texas constitutional law, *Edgewood v. Kirby*, 777 s.w. 2d 391 (Tex. 1989). This decision on Texas public school finance still resonates today. Probably none of Oscar's friends would characterize him as long on judicial temperament; he was simply too political and too combative. On the other hand, he knew, as we say, "how the cow ate the cabbage," and from his labors in the Texas senate he knew intimately the horrors of Texas public school finance.

Shortly after I left the AG's office and returned to private practice, I was approached by an organization of poor Texas school districts about the possibility of using the Texas Constitution to challenge the system of funding public schools. They were also talking to Rick Gray, and in short order Rick and I agreed to take it on as a joint project. As I have noted elsewhere, Rick was a superb lawyer and, equally important, terribly patient with my idiosyncrasies. A similar suit had been filed some years earlier by Al Kauffman on behalf of the Mexican American Legal Defense Fund, but it had been languishing in the Travis County District Court. With an excess of hubris, Rick and I promised to crank up and get to trial promptly. At that time, we were

utterly naive about the complexities of the Texas system of public school finance. If we had known anything about the system, we never would have made such a rash promise. We coordinated with Al, filed a new lawsuit, and then consolidated our two cases. We managed to get the matter in front of Judge Harley Clark. In that era in Travis County, if you sought immediate injunctive relief, you had a fair shot at picking your judge, and we made the felicitous choice of Judge Clark, who had a well-deserved reputation for courage and intelligence.

We were consigned to the Texas Constitution by sheer necessity. The U.S. Supreme Court had rejected a challenge to the Texas funding system in 1973, holding that the U.S. Constitution did not recognize education to be a fundamental right, and that the acknowledged disparities in the Texas funding system did not give rise to a constitutional concern. This earlier ruling by the U.S. Supreme Court had not spoken to any potential issues under the Texas Constitution, which was, and is, a progressive document with a far-reaching Bill of Rights. Everyone was pretty much in agreement that the existing funding system was a nightmare, but that alone was not sufficient to create constitutional deficiencies. We fixed on Article 7 of the constitution as our best hope. It reads:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature . . . to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

These were high-sounding words, but what in heaven's name did they mean?

This portion of the Texas Constitution had never been judicially construed. The debates surrounding the enactment of the provision in 1876 were sketchy and by no means definitive as to the founders' intent. But Rick and I had let our big mouths overload our asses, and we were set for trial and could not back down. It was much like running an unfamiliar river—you can hear rapids roaring around the bend, but you don't know what side of the river is passable, if at all, so you plow on and hope for the best. That is just about how we tried this case.

A plethora of data was available, because if there is one thing educational bureaucrats know how to do, it is to accumulate numbers. There were more than one thousand school districts in the state and 3 million students in the system. Some districts had tens of thousands of students, some had less than fifty. Bexar County alone had fifteen separate school districts. The core problem was that the wealth between the districts varied drastically, and a large portion of the funding of the public schools was derived from local property taxes. Essentially 50 percent of the funding of the state's public schools was provided by local real property taxes.

The disparities between pupil expenditures and taxes was enormous. In Dallas County, the Highland Park District taxed at 35 cents per $100 valuation and spent $4,473 per student, while the Wilmer-Hutchins District in Dallas, largely Black, taxed at $1.05 and expended $3,513 per student. The most outrageous example of the differing tax burdens was reflected in the contrast between the Crystal City District and the Iraan-Sheffield District. The poor folks of Crystal paid $1,106 tax on an $80,000 house, while in Iraan-Sheffield a similar structure was taxed at $38. In San Antonio, for example, the Edgewood School District had some $38,000 of property wealth for each student, while Alamo Heights had $570,000 per student. This pattern was

repeated across the state and resulted in extreme disparities in the expenditures per student; the lowest expenditure was $2,112 per student and the highest was $19,333. The local property tax rates were similarly wildly variant. The one hundred poorest districts had an average tax rate of 75 cents per $100 valuation and spent on average $2,978 per student. In contrast, the one hundred wealthiest districts had an average tax rate of 47 cents and spent $7,233 per student. All of these numbers were pretty well understood when we went to trial; they could be massaged somewhat, but the stark differences in expenditures and tax burdens could not be justified on any rational basis.

These were the same kinds of numbers the U.S. Supreme Court had looked at twenty years earlier, and it had found no constitutional deficiencies. Something more was needed, but we didn't know what. Of course, the Texas Constitution differed from the U.S. Constitution in that the former placed the obligation on the legislature to make "suitable provision for the support and maintenance of an efficient system of public free schools." Although we could not define "efficient" with any certainty, we did come to know what it wasn't. It was not the existing system. For how could it be efficient for the legislature to create such a haphazard arrangement of school districts, with widely varying tax bases, and then rely on these districts to supply 50 percent of school funds through local taxes?

A cluster of most able lawyers represented the state and various wealthy school districts: Kevin O'Hanlon, whom I had hired at the AG's office, represented the Texas Education Agency; Jim Turner, now a member of Congress from East Texas, was there; as were Ray Hutcheson, a one-time candidate for governor in the Republican primary, and Earl Luna, a longtime politico from Dallas County. In some ways, the abundance of able opponents played to our advantage. If lawyers are being paid to be in court, you can bet they are going to insist on their time on camera. The courtroom was packed with observers, and this meant we all had to show off, which we did with interminable arguments and protracted cross-examination of witnesses.

The cross-examination of our first witness lasted for several days, with two results—one quite beneficial, one not so. On the negative side, it exposed that although we could identify the evils of the system, we had nary a clue about how to remedy the problems. After much argument, we were successful in persuading the court that we were not yet at the remedy phase and could therefore properly pursue a declaration of the unconstitutionality of the system without proposing solutions. Our argument, which seemed plausible, was that remedy was for the legislature, and the court's role was simply to pass on the constitutionality of the existing scheme.

On the positive side, the tedious cross-examination gave us long hours to think about our case and try to come up with reasonable lines of attack. During one lengthy day, I became increasingly restless and began to poke around in our boxes of exhibits, many of which none of us had examined with any care. I stumbled upon a volume that contained maps of all the school districts of the state. As I thumbed through the maps, it became clear that there was little rhyme or reason to the districts: wealthy districts with few students sat beside poor districts that had all the students. In some instances, these were simply tax-haven districts—gas wells in one district with few students and low taxes, and adjoining districts with no tax base and high taxes. One Potter County district, which adjoined the Amarillo Independent School District, had almost no students and contained a long, skinny protrusion that rather obviously

embraced a pipeline that would have dramatically increased the tax base of the Amarillo district if the two districts had been joined. In El Paso County, the Ysleta District was cut into two separate noncontiguous parts.

The more we looked at the maps, the more obvious it became that the districts were a higgledy-piggledy mess, with many of the districts explained by tax considerations and few seemingly explained by educational concerns. Before the trial was concluded, Rick and I had constructed huge maps displaying the most egregious examples of the gerrymandering of school-district lines, and we gleefully trotted them out at every opportunity. Judge Clark was persuaded by our arguments and declared the state funding system in violation of the Texas Constitution. He found, among other things, that the system did not satisfy the constitutional mandate to be "efficient," because there was no linkage between tax effort and the funds generated.

To be constitutionally efficient, the funding system must be designed to provide each district with an equal opportunity to raise funds, and there should be a reasonable relationship between tax effort and the amount of tax revenues produced for the district. Although Judge Clark enjoined the state defendants from further expenditures under the old system, he delayed the effect of the injunction to enable the defendants to appeal . . . which of course they did.

Appellate processes are slow, and in this instance the case moved first to the Austin Court of Appeals. We lost a two-to-one decision in that court in 1988, with the majority upholding the constitutionality of the finance system. The Texas Supreme Court took our appeal, and we argued the case in 1989 before a court that had begun to include some Republicans as a result of appointments by Governor Clements. It was decidedly strange to find myself arguing a case of such magnitude to a court that included my old ally Oscar Mauzy. I trotted out my chamber-of-horrors maps of school districts, and the court seemed genuinely taken by their absurdity. Appellate arguments can be a fascinating experience. Appellate judges like to ask questions, often difficult questions, sometimes just to watch the lawyers squirm. You never know what to expect by way of questions, and you have to make forthright responses without giving away your case. Understandably, naggy questions came from the Republican members of the court about our proposed remedy, which we tried our best to dodge. Judges are skilled at, and seem to enjoy, misleading lawyers during oral argument. The lawyers leave such an argument in total darkness as to the probable outcome. After argument, Al, Rick, and I speculated, as all lawyers do, as to which members might be sympathetic, but it was largely guesswork. Typically, months ensue after oral argument before a decision issues from an appellate court. So you return to your workaday world and try not to drive yourself crazy wondering about the outcome.

In October 1989, the Texas Supreme Court unanimously declared the Texas funding system unconstitutional; Oscar Mauzy wrote the opinion. Unknown to us, Oscar had drawn the case before argument. In those years, the Texas Supreme Court assigned cases by drawing lots, and Oscar had caught the school finance case. It was a great tribute to his skills that he managed to craft an opinion that was joined by every member of the court. Like the trial court, the Texas Supreme Court held, relying on the "efficient" clause, that "there must be a direct and close correlation between a district's tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort." This seems like a totally fair and unremarkable proposition, but it

generated a firestorm of complaints in the wealthy school districts, and they reverberate to this day.

The case remained in the courts for years and will probably be revisited again. The underlying principle has been tagged with the "Robin Hood" label by the wealthy districts and their supporters. From early childhood, Robin Hood was my hero, and I suppose I should feel rewarded that this label emerged in a case that I helped design. I certainly have no sympathy for those residents in pockets of wealth who think that because a power plant was built in their school district, the tax revenues generated by such a windfall should belong exclusively to that district and not be shared with their neighbors.

Lawyers keep score like baseball teams: a case goes in either the won or lost column. It was a rush to put this one in the won column, made more so by the conjoining with my old comrade in arms Oscar Mauzy. Oscar battled for the little guy, the underdog, all of his life. In later years, nothing gave him greater satisfaction than his opinion in *Edgewood* and the blow it struck for kids trapped in the impoverished school districts of Texas. Knowing Oscar, he probably took equal joy in hitting the fat cats of Highland Park and elsewhere with a haymaker that rattled their jaws. Oscar died in 2000, and the speakers at his memorial included Congressman Lloyd Doggett, who served with Oscar in the Texas senate and on the Texas Supreme Court. As Lloyd put it, "killing with kindness was not Oscar's preferred approach to his adversaries."

Oscar Mauzy and Ralph Yarborough were two great scrappers, and each helped form my politics in my youth. They were at the forefront of remaking Texas as we now know it. Much of the progress in voting rights, environmental protection, and human rights can be traced back to their efforts. I was fortunate to know them when I was young, and I was doubly blessed to have the chance in later life to renew my respect for their commitment to the battle for social justice. Like Rambling Jack, who wanted to find the wellsprings of folk music, I think I wanted to find fighters who fought the good fight. I did so, and this chapter acknowledges some of those I met along the way—and there have been plenty more. I have been lucky. I have consorted with fearless souls who enriched our lives at every turn. I fully expect to continue to encounter a familiar face around every turn of the bend, some warrior who still breathes fire and doesn't give a shit about the consequences. Nothing could be richer.

EARLY BIRD BOOKS

UNIVERSITY OF TEXAS PRESS

Love this book?

Choose another ebook on us from a selection of similar titles!

- or -

Not loving this book?

No worries - choose another ebook on us from a selection of alternate titles!

CLAIM YOUR FREE EBOOK

Index

Alexander, Stan, 178
Alger, Bruce, 22–23
Allaire, Ed, 136
Allee, A. Y., 40–41
Allen, Earl, 29
Allen, George, 96
Allred, Jimmy, 10, 230, 261
Angerman, Jerry, 202
Armstrong, Bob, 3, 86, 194, 215, 224, 226
Atwell, Jumbo, 192–193
Ayres, Clarence, 8

Bach, Emmon, 141
Baker, W. H., 198
Bales, Larry, 148, 150–151
Barlow, Jim, 143
Barnes, Ben, 48, 86, 93, 136, 148
Barnhart, John, 73
Barrientos, Gonzalo, 148–151
Bean, Woodrow, 23–24
Bentsen, Beryl, 12
Bentsen, Lloyd, 12, 15, 186, 226, 257
Bernal, Joe, 54
Black, Hugo, 72
Blackmon, Harry, 71
Blackwell, Tom, 129
Blakley, Bill, 15, 223
Bock, George, 88
Boone, Fletcher, 84, 153
Bowmer, Jim, 190
Bradshaw, Leo, 2
Bragg, Davis, 74, 190
Brammer, Bill, 8, 25, 81, 83
Brammer, Nadine, 57
Brann, William Cowper, 115
Brannin, Carl, 117–118, 122
Briscoe, Dolph, 73, 136, 148, 197–198, 225
Brooks, Chet, 54
Brown, John R., 90
Brown, Reagan, 225–226
Browne, Dorothy, 81, 175
Bryant, John, 207, 209–210
Buchmeyer, Jerry, 231–232
Buck, Louis, 83
Bullock, Bob, 127–128, 150, 156–158, 246, 249–252
Bundy, McGeorge, 136
Burleson, Bob, 190–191
Burnett, Warren, 73, 75, 141, 176, 183, 189
Burns, Stoney, 65–73, 114, 129
Bush, George, 1, 246
Butts, David, 147, 151–152

Byers, Bo, 87

Calvert, Robert, 86
Carr, Billie, 88
Carr, Waggoner, 48, 223
Carruth, Irby, 139–140
Carswell, Harold, 71
Carter, Jimmy, 160, 186, 215
Cartwright, Gary, 78, 174, 176–177, 180–181, 183, 185–186
Charles, Ray, 179
Christie, Joe, 54
Cisneros, Henry, 240, 243
Clark, Guy, 1, 173–174, 252
Clark, Harley, 203–204, 262, 265
Clayton, Billy, 203
Clements, Bill, 201, 203–204, 207, 224, 226, 229, 249
Cline, Jim, 164–165
Clinton, Sam Houston, 71, 73, 77, 80–82, 145, 175–176, 192, 212, 214–216
Cloutman, Ed, 75, 203
Clower, Ron, 192–193
Cody, Commander, 179
Cofer, John, 12
Cohen, Fred, 73
Coleman, Brady, 217, 219
Coleman, Ross, 109
Collins, John, 92
Compean, Mario, 76
Connally, John, 29–30, 35, 48, 52–53, 56, 127, 223
Cooksey, Frank, 194
Cornejo, Juan, 40–41
Cornett, Leighton, 205
Cowan, Finis, 160
Craft, Juanita, 206
Cunningham, Cam, 61, 75, 113, 141

Daniel, Price, 9–10, 15, 52
Daves, Larry, 169
Davidson, Chandler, 12
Davidson, T. Whitfield, 59
Davis, Harold, 148
Davis, Rod, 176
Dean, David, 201–203
Delco, Wilhemina, 150, 187
Derfner, Armand, 91
Dickson, Fagan, 176
Dimick, David, 117
Dixie, Chris, 40–41
Dixie, George, 21
Dobie, J. Frank, 8
Doggett, Lloyd, 150, 267
Dohrn, Bernadine, 74
Douglas, William O., 72, 190
Dubinsky, David, 46
Dugger, Ronnie, 8, 176
Duncan, John, 156, 175, 198
Durst, Phil, 236, 239

Earle, Ronnie, 150, 234–236

Eckhardt, Bob, 81, 236
Elliott, Rambling Jack, 173, 255–256, 267
English, Henry, 43
Erwin, Frank, 57, 127, 130, 134, 213
Estes, Billy Sol, 21
Estes, Joe, 90
Evans, Roy, 162

Farenthold, Frances (Sissy), 148, 225
Farrell, Clyde, 227
Fath, Conrad, 152
Fath, Creekmore, 12
Faulk, John Henry, 254–267
Faulk, Lizzie, 254
Ferguson, Ma and Pa, 148, 226
First Amendment Litigation
—*Dallas Notes (Dyson v. Stein)*, 65–72
—Loyalty Oath *(Gilmore v. James)*, 57–64
—*The Rag (New Left Education Project v. U.T. Regents)*, 129–135
Flowers, Ruby, 198
Foreman, James, 244
Foreman, Wilson, 148, 151
Fortas, Abe, 71
Frank, Raymond, 149
Franklin, Jim, 179
Friedman, Jeff, 106, 147
Frost, Martin, 204, 250
Fullingim, Arch, 221

Gallant, Edward, 142
Garcia, Franklin, 44, 49–50
Garcia, Matt, 207
Gardner, James, 84
Garry, Charles, 74
Garza, Reynaldo, 61, 160
Gavenda, David, 136
Gee, Tom, 91, 199
Gent, Jodie, 177
Gent, Pete, 177
George, Jim, 91
Gerry, Elbridge, 248
Gilmore, Ev, 57, 61, 64
Gladden, Don, 101–102, 209
Goldberg, Arthur, 21
Goldberg, Irving, 59–60, 69, 71, 99, 101, 147, 168
Goldwater, Barry, 31
Gonzalez, Henry B., 14, 223, 253
Gonzalez, Raul, 261
Gore, Albert, 19
Gould, Tom, 141
Granger, Ned, 194
Graves, Curtis, 87, 90
Gray, Rick, 204, 227, 242, 247, 250–251, 262–263, 266
Green, Tom, 236
Griffith, Nanci, 217
Grover, Henry, 225
Guinn, Ernest, 61
Guthrie, Woody, 255

Hall, Steve, 241
Hall, Walter, 10
Hancock, Butch, 217
Hannah, John, 170
Harding, Warren, 224
Harvey, Sporty, 108
Haynesworth, Clement, 71
Henderson, Amos, 165–166
Henderson, Johnnie, 162
Herman, Guy, 146, 213, 218–219
Hershey, Marge, 175
Hershorn, Shel, 29, 34–36
Hickerson, Carl, 14
Hicks, Renea, 239
Hightower, Jim, 176, 224, 226
Hill, Danny, 232
Hill, Forrest, 136
Hill, John, 102, 198–199, 224, 238
Hobby, Bill, 224, 226, 240–243, 246
Hodgkins, Gordon, 41–43, 50
Hoffa, Jimmy, 17, 38–40
Holleman, Jerry, 21
Holman, Henry, 11, 80–81, 189
Holman, Mary, 84
Holmes, Zan, 87, 99
Hornsby, Hugh, 148
Huber, John, 149
Hudson, Sam, 100
Hughes, Howard, 236
Hughes, Sarah T., 33, 59–60, 68–69, 71, 147–148, 168
Hunt, H. L., 31
Hutcheson, Ray, 264

Idar, Ed, 91
Ivins, Molly, 149, 176, 185, 194
Ivy, David, 55–56
Ivy, Frank, 153, 199, 215

Jacks, Tommy, 106
Jalet, Frances Freeman, 75
Janes, Daryl, 74
Jaworski, Leon, 92, 99
Jennings, Waylon, 179
Jester, Beauford, 135
Johnson, Eddie Bernice, 100
Johnson, Lady Bird, 22–23
Johnson, Lyndon, 2, 10–12, 18, 21–22, 26–27, 30, 33, 47, 57, 59, 71, 89
Johnson, Sam, 206, 210
Joplin, Janis, 179
Jordan, Barbara, 54, 87, 90, 211
Jordan, John, 117
Justice, William Wayne, 61, 75, 89–90, 99, 101, 157–158, 162, 164–165, 170–171, 186, 198–199

Kauffman, Al, 262, 266
Keller, Mary, 227
Kennard, Don, 188, 193

Kennedy, Bobby, 38
Kennedy, John, 22–24, 31–33
Kilgarlin, Bill, 20–21, 53
King, Larry, 25, 184
Koenig, Fred, 34–35
Korbel, George, 101, 112, 196–197, 201–205, 208, 210–211, 250
Korioth, Claire, 96
Korioth, Tony, 53, 89
Krajl, Nick, 127
Krier, Cindy, 251
Kugle, Bill, 89, 143, 188, 190–191, 215
Kultgen, Jack, 34–35
Kultgen, Phyllis, 192
Kuntsler, William, 17, 74, 76

Ladusch, Max, 244
Lambert, George, 44–46, 50
Lambert, Latane, 45
Lansky, Meyer, 40
Lee, Jean, 11
Leland, Mickey, 100
Lelyveld, Joe, 3
Levy, Mike, 96
Levy, Moe, 34–35, 66
Linn, Emma Lou, 151
Lisnow, Harmon, 236
Long, Emma, 144–145
Long, Stuart, 145
Lovett, Lyle, 217
Lowe, Hugh, 106
Luna, Earl, 264

Mallett, Ed, 75
Malone, Bill, 179
Manges, Clinton, 233
Mantle, Tom, 62
Martin, Crawford, 63, 86–87, 93, 102, 131
Matthews, Charles, 184
Mattox, Jim, 98, 187, 201, 204–207, 211, 225–226, 228–231, 243–245, 252
Mauro, Garry, 225–226, 258, 260
Mauzy, Oscar, 18, 23, 35, 54–56, 73, 88–89, 91–92, 95, 123, 207–208, 225, 244, 253, 257, 262, 266–267
Maverick, Maury Jr., 26, 46, 73, 75, 108, 113, 223, 255
Maverick, Maury Sr., 26, 46–47
McBryde, Grady, 42–44
McCarthy, Joe, 26
McCauley, Morris, 109
McCown, Scott, 239
McDade, Tom, 233
McGregor, Malcolm, 14, 184–185
McKool, Betty, 186, 244
McKool, Mike, 35, 54, 73, 88, 225
McMillan, Ernie, 70
McMurtry, Larry, 31
McNeely, Dave, 215
McPherson, Harry, 24–26, 30, 46, 56
Meacham, Standish, 136
Medrano, Pancho, 32

Melton, Allen, 88
Mersky, Roy, 62, 76
Midler, Bette, 179
Miles, Bob, 106
Miller, Dusty, 39, 41
Miller, Tom, 21
Milner Jay, 174
Minton, Roy, 128, 235
Mitchell, John, 76
Montgomery, Bob, 8
Moore, Tom, 87
Morales, Dan, 246–247, 249, 251
Morris, Celia, 81
Morris, Charlie, 38
Morris, Willie, 8, 81, 189
Morse, Wayne, 56
Moya, Richard, 145–146, 248
Mullen, Bob, 14
Mullinax, Otto, 17, 33, 40, 192
Mutscher, Gus, 86

Nelson, Bobby, 217–218
Nelson, Willie, 175, 179
Newton, Huey, 74
Noel, James, 61, 155, 158–160
Nofziger, Max, 147
Northcott, Kaye, 176
Nowlin, James, 250–252

Oakes, Wayne, 175, 191–192, 256–257
Oden, Ken, 146
O'Hanlon, Kevin, 264
Olds, Greg, 176
Oswald, Lee Harvey, 32–33

Palter, Bob, 79
Parker, Robert, 206
Parsley, Bill, 11
Parten, J. R., 10
Patman, Bill, 86–87
Patman, Wright, 86–87
Perry, Rick, 246
Philpott, Tom, 136
Pickle, Jake, 150–151, 176
Pierce, George, 251
Polk, Ed, 75
Pomeroy, Bob, 115, 118, 122, 124
Powell, Lewis, 100
Pratt, David, 141
Pregnancy Discrimination *(Schattman v. TEC)*, 108–110
Prinz, Rick, 75
Pryor, Cactus, 255

Quinlan, Richard, 82–83

Ragsdale, Paul, 100, 162, 164, 206
Rainey, Homer, 135
Raitt, Bonnie, 220

Ramsey, Buck, 256
Randolph, Frankie, 10, 12–13, 20
Rayburn, Sam, 2, 10, 248
Reagan, Ronald, 212
Reavley, Tom, 233
Reedy, George, 60
Regester, Diane, 89
Reyes, Ben, 100
Richards, Ann, 8, 11, 16, 18–19, 21, 26, 28, 32, 34, 36–37, 48, 56, 77, 92, 128, 144–148, 151–152, 180, 185–186, 188, 191, 212, 215, 224–225, 240, 242, 252
Richards, Cecile, 18, 33, 48, 79
Richards, Clark, 28, 72, 79
Richards, Dan, 18, 79, 110, 138
Richards, Eleanor, 111, 253
Richards, Ellen, 37, 79, 114, 151
Richards, Hallie, 194, 242
Richards, Sam, 194, 242
Richards, Sandy, 81, 216, 220, 239, 244, 252
Roberts, Jack, 61, 75, 105, 107, 120, 124, 134, 137, 143
Robertson, Cliff, 181–182, 184
Robinson, Dorothy, 169
Robinson, Frank, 161, 164, 167, 169–170,
Rogers, Lorene, 136–137
Rosenthal, Abe, 185
Ruiz, Buddy, 145
Ruiz, Jim, 145
Ruiz, Victor, 145
Russell, Steve, 106
Rylander, Carole, 151, 181

Sams, Eristus, 155, 159–161
Sanders, Barefoot, 257
Sauer, Larry, 75
Schattman, Mary Ellen, 108–110
Schattman, Mike, 110
Schatzki, George, 27, 34–35, 38, 61, 78, 106–107, 126
Schatzki, Lorraine, 34
Schild, Al, 141
Schleuter, Patsy, 111–112
School Finance Litigation *(Edgewood v. Kirby)*, 262–267
Schwartz, Babe, 95
Seals, Woodrow, 61
Senff, Tom, 166
Sewell, (Tiger) Jim, 60
Shafer, Marion, 8–9
Shafter, M. D., 177, 180
Shapiro, Dave, 80
Sharlot, Mike, 185
Sharlot, Sue, 185
Shaw, Gwen, 240
Shelton, Emmett, 79
Shepherd, John Ben, 13
Shepley, Larry, 136
Shivers, Allan, 6–7, 9–11, 13, 15, 136
Shrake, Bud, 78, 177–178, 181, 183, 185–186
Silber, John, 135, 175
Simons, Jim, 21, 74–75, 113, 141
Singleton, John, 61

Smith, Bob, 140–141
Smith, Preston, 149
Snell, Jimmy, 151
Spears, Adrian, 61, 134, 143
Speights, Sarah, 109, 153
Speir, Wilson, 124
Spurr, Stephen, 135
Starr, Kenneth, 234
Stevenson, Adlai, 32
Stewart, Maco, 14
Strawn, Dan, 82
Student Voting Rights *(Whatley v. Clark)*, 156–160
Suttle, D. W., 61
Sutton, G. J., 100
Sutton, Percy, 100
Symm, Leroy, 154–155, 159

Talbot, Dave, 239
Taylor, W. M. (Mac), 59–60, 96, 147
Temple, Buddy, 224, 226
Terrell, George, 50
Thomas, Norman, 117
Thornberry, Homer, 53, 134, 143, 157
Threadgill, Kenneth, 216
Tims, Inez, 161, 170–172
Tower, John, 52, 222–223
Trevino, Johnny, 151
Trice, John, 237
Turner, Fred, 258–259
Turner, Jim, 264

Vagrancy Statute *(Gallant v. Barlow)*, 142–145
Valles, Robert, 203
Vollers, James, 214
Voting Rights Litigation
—*(White v. Regester)*, 85–94
—*(Robinson v. Anderson County)*, 161–170
Vouduris, Johnny, 151–152

Wade, Henry, 70, 73, 231
Walker, Edwin A., 30–31
Walker, Jerry Jeff, 173, 179, 186
Walker, Stanley, 80
Ward, Betty, 79
Ward, Leslie, 79
Washington, Craig, 100, 102, 206, 211
Weaver, Arthur, 161–162, 164, 166–168
Weaver, Robert, 223
Webster, Chuck, 50
Weddington, Sarah, 147–148, 150
Weisberg, Gloria, 198
Weiser, Dan, 95, 97–99, 162–163, 244
Weldon, Fred, 38
Wells, Nat, 17, 38
Wentworth, Jeff, 251
Wheeler, Bob, 14
White, Byron, 103
White, John, 187

White, Mark, 159, 197–199, 224, 226–231, 238, 242, 245
White, Phil, 136–137
Whitten, Sam, 34, 36, 78
Whitten, Virginia, 34, 48, 78
Wiginton, Martin, 73, 141, 217–218
Williams, Clayton, 149, 245–246
Williams, Lucinda, 217
Wilson, Charlie, 54, 170, 172, 221
Wilson, Clyde, 241
Wilson, Eddie, 153, 179–181
Wilson, Will, 30
Wirtz, Alvin, 47
Wood, Buck, 156
Wood, John R., 91
Woodward, C. Vann, 5
Woodward, Halbert, 61
Worthington, Leta, 175
Wright, Charles Alan, 129
Wright, Jim, 223

Yarborough, Don, 30
Yarborough, Ralph, 5–8, 10, 14–15, 30, 52, 56–58, 72, 98, 150, 193, 223, 257–262, 267

Zashin, Elliott, 141
Zwiener, Lonnie, 200